



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-22092020-221867
CG-DL-E-22092020-221867

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 17] नई दिल्ली, सोमवार, सितम्बर 14, 2020/भाद्रपद 23, 1942 (शक)
No. 17] NEW DELHI, MONDAY, SEPTEMBER 14, 2020/BHADRAPADA 23, 1942 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 14th September, 2020:—

BILL NO. 110 OF 2020

*A Bill further to amend the Salary, Allowances and Pension of
Members of Parliament Act, 1954.*

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 2020. Short title and commencement.

(2) It shall be deemed to have come into force on the 7th day of April, 2020.

30 of 1954.

2. In the Salary, Allowances and Pension of Members of Parliament Act, 1954, in section 3, after sub-section (1), the following sub-section shall be inserted, namely:— Amendment of section 3.

"(1A) Notwithstanding anything contained in sub-section (1), the salary payable to Members of Parliament under sub-section (1) shall be reduced by thirty per cent. for a period of one year commencing from the 1st April, 2020, to meet the exigencies arising out of Corona Virus (COVID-19) pandemic."

Repeal and
savings.

3. (1) The Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 2020 is hereby repealed.

Ord. 3 of 2020.

(2) Notwithstanding such repeal, anything done or any action taken under the Salary, Allowances and Pension of Members of Parliament Act, 1954, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act as amended by this Act.

30 of 1954.

STATEMENT OF OBJECTS AND REASONS

The Salary, Allowances and Pension of Members of Parliament Act, 1954 provides for the salary, allowances and pension of Members of Parliament.

2. India, as the rest of the world, is grappling with Corona Virus (COVID-19) pandemic which has severe health and economic ramifications for the people of the country. Immediate and expeditious relief as well as emergency assistance measures are being taken to prevent and contain the spread of said pandemic. In order to manage and control such situation, it became necessary to raise resources from different sources, including by reduction in the salary of Members of Parliament.

3. To achieve the said objective, certain amendments were required to be made in the Salary, Allowances and Pension of Members of Parliament Act, 1954. As the Parliament was not in session and there was immediate need for legislation, the Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 2020 was promulgated by the President of India on the 7th day of April, 2020 under clause (1) of article 123 of the Constitution.

4. The Salary, Allowances and Pension of Members of Parliament (Amendment) Bill 2020 which seeks to replace the Salary, Allowances and Pension of Members of Parliament (Amendment) Ordinance, 2020 (Ord. 3 of 2020) provides for amendment of section 3 of the said Act by inserting a new sub-section (1A) therein, to provide that the salary payable to Members of Parliament under sub-section (1) shall be reduced by thirty per cent. for a period of one year commencing from 1st April, 2020.

5. The Bill seeks to replace the aforesaid Ordinance.

PRALHAD JOSHI.

NEW DELHI;
The 1st September, 2020.

BILL NO. 111 OF 2020

A Bill further to amend the Essential Commodities Act, 1955.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

Short title and
commencement.

1. (1) This Act may be called the Essential Commodities (Amendment) Act, 2020.

(2) It shall be deemed to have come into force on the 5th day of June, 2020.

Amendment
of section 3.

2. In section 3 of the Essential Commodities Act, 1955, after sub-section (1), the following sub-section shall be inserted, namely:—

10 of 1955.

‘(1A) Notwithstanding anything contained in sub-section (1),—

(a) the supply of such foodstuffs, including cereals, pulses, potato, onions, edible oilseeds and oils, as the Central Government may, by notification in the Official Gazette, specify, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature;

(b) any action on imposing stock limit shall be based on price rise and an order for regulating stock limit of any agricultural produce may be issued under this Act only if there is—

(i) hundred per cent. increase in the retail price of horticultural produce; or

(ii) fifty per cent. increase in the retail price of non-perishable agricultural foodstuffs,

over the price prevailing immediately preceding twelve months, or average retail price of last five years, whichever is lower:

Provided that such order for regulating stock limit shall not apply to a processor or value chain participant of any agricultural produce, if the stock limit of such person does not exceed the overall ceiling of installed capacity of processing, or the demand for export in case of an exporter:

Provided further that nothing contained in this sub-section shall apply to any order, relating to the Public Distribution System or the Targeted Public Distribution System, made by the Government under this Act or under any other law for the time being in force.

Explanation.—The expression "value chain participant", in relation to any agricultural product, means and includes a set of participants, from production of any agricultural produce in the field to final consumption, involving processing, packaging, storage, transport and distribution, where at each stage value is added to the product.'

Ord. 8 of 2020.

3. (1) The Essential Commodities (Amendment) Ordinance, 2020 is hereby repealed.

Repeal and savings.

10 of 1955.

(2) Notwithstanding such repeal, anything done or any action taken under the Essential Commodities Act, 1955, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Essential Commodities Act, 1955 (10 of 1955) was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.

2. While India has become surplus in most agricultural commodities, farmers have been unable to get better prices due to lack of investment in cold storage, warehouses, processing and export as entrepreneurs get discouraged by the regulatory mechanisms in the Essential Commodities Act, 1955. A High Powered Committee of Chief Ministers who examined this issue, recommended removal of stringent restrictions on stock, movement and price control of agricultural foodstuffs for attracting private investments in agricultural marketing and infrastructure.

3. Due to COVID19 pandemic, the economy had been adversely affected leading to unemployment and slowdown. The agriculture sector has the potential of making significant contribution to economic growth and therefore, to boost immediate investment in this sector, increase competition and enhance farmers' income, there was a need to create an environment based on ease of doing business and for removing the fear of frequent statutory controls under the Essential Commodities Act.

4. As Parliament was not in session and there was an immediate need for legislation in this regard, the Essential Commodities (Amendment) Ordinance, 2020 was promulgated by the President of India on the 5th day of June, 2020 under clause (1) of article 123 of the Constitution.

5. The Essential Commodities (Amendment) Bill, 2020 which seeks to replace the Essential Commodities (Amendment) Ordinance, 2020 (Ord.8 of 2020) provides in the newly inserted sub-section (1A) to section 3 that notwithstanding the provisions of sub-section (1),—

(a) the supply of such agricultural foodstuff as are notified by the Central Government shall be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature;

(b) any action for imposing stock limit shall be based on price rise, subject to the conditions and exemptions specified therein.

6. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 17th August, 2020.

RAM VILAS PASWAN.

BILL NO. 97 OF 2020

A Bill for the regulation and supervision of the assisted reproductive technology clinics and the assisted reproductive technology banks, prevention of misuse, safe and ethical practice of assisted reproductive technology services and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Assisted Reproductive Technology (Regulation) Act, 2020.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appointed day" means the date on which the provisions of this Act shall come into force;

(b) "artificial insemination" means the procedure of artificially transferring semen into the reproductive system of a woman and includes insemination with the husband's semen or with the donor's semen;

(c) "assisted reproductive technology" with its grammatical variations and cognate expressions, means all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman;

(d) "assisted reproductive technology bank" means an organisation that is set up to supply sperm or semen, oocytes or oocyte donors to the assisted reproductive technology clinics or their patients;

(e) "assisted reproductive technology clinic" means any premises equipped with requisite facilities and medical practitioners registered with the National Medical Commission for carrying out the procedures related to the assisted reproductive technology;

(f) "child" means any individual born through the use of the assisted reproductive technology;

(g) "commissioning couple" means an infertile married couple who approach an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the services authorised of the said clinic or bank;

(h) "egg" means the female gamete;

(i) "embryo" means a developing or developed organism after fertilisation till the end of fifty-six days from the day of fertilisation;

(j) "gamete" means sperm and oocyte;

(k) "gamete donor" means a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child;

(l) "gynaecologist" shall have the same meaning as assigned to it in the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;

57 of 1994.

(m) "infertility" means the inability to conceive after one year of unprotected coitus or other proven medical condition preventing a couple from conception;

(n) "National Board" means the National Board for Surrogacy to be constituted under sub-section (1) of section 15 of the Surrogacy Act;

(o) "National Registry" of Assisted Reproductive Technology Clinics and Banks in India, means a Registry established under section 9;

(p) "notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(q) "patients" means an individual or couple who comes to any registered assisted reproductive technology clinic for management of infertility;

(r) "prescribed" means prescribed by rules made under this Act;

(s) "Registration Authority" means the Authority appointed under section 12;

(t) "regulations" means the regulations made by the National Board under this Act;

(u) "sperm" means the mature male gamete;

(v) "State Board" means a State Board for Surrogacy to be constituted under sub-section (1) of section 24 of the Surrogacy Act;

(w) "Surrogacy Act" means the Surrogacy (Regulation) Act, 2020; and

(x) "woman" means any woman above the legal age of marriage who approaches an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the authorised services of the clinic or bank.

(2) The expressions "clinics" and "banks" occurring in this Act shall be construed as "assisted reproductive technology clinics" and "assisted reproductive technology banks".

CHAPTER II

AUTHORITIES TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY

A. THE NATIONAL BOARD

3. The National Board to be constituted under sub-section (1) of section 15 of the Surrogacy Act shall be the National Board for the purposes of this Act.

National Board.

4. Subject to the provisions of this Act and the rules made thereunder, the provisions of the Surrogacy Act relating to—

Application of provisions of Surrogacy Act with respect to National Board.

(i) constitution of the National Surrogacy Board;

(ii) term of office of Members of the National Board;

(iii) meetings of the National Board;

(iv) vacancies, etc., not to invalidate proceedings of the National Board;

(v) disqualifications for appointment as Member of the National Board;

(vi) temporary association of persons with the National Board for particular purposes;

(vii) authentication of orders and other instruments of the National Board; and

(viii) eligibility of Members of the National Board for re-appointment,

shall, *mutatis mutandis*, apply, so far as may be, in relation to assisted reproductive technology as they apply in relation to surrogacy, as if they are enacted under this Act.

5. The National Board shall exercise and discharge the following powers and functions, namely:—

Powers and functions of National Board.

(a) to advise the Central Government on policy matters relating to the assisted reproductive technology;

(b) to review and monitor the implementation of the Act, rules and regulations made thereunder and recommend to the Central Government, any suitable changes therein;

(c) to lay down code of conduct to be observed by persons working at clinics, to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by clinics and banks;

(d) to oversee the performance of various bodies constituted under this Act and take appropriate steps to ensure their effective performance;

(e) to supervise the functioning of the National Registry and liaison with the State Boards;

(f) to pass orders as per the provisions made under this Act; and

(g) such other powers and functions as may be prescribed.

B. STATE BOARD

State Board. **6.** The State Board to be constituted under sub-section (1) of section 24 of the Surrogacy Act shall be the State Board for the purposes of this Act.

Application of provisions of Surrogacy Act with respect to State Board. **7.** Subject to the provisions of this Act and the rules made thereunder, the provisions of the Surrogacy Act relating to—

- (i) constitution of the State Surrogacy Board;
- (ii) composition of the State Board;
- (iii) term of office of members of the State Board;
- (iv) meetings of the State Board;
- (v) vacancies, etc., not to invalidate proceedings of the State Board;
- (vi) disqualifications for appointment as member of the State Board;
- (vii) temporary association of persons with the State Board for particular purposes;
- (viii) authentication of orders and other instruments of the State Board; and
- (ix) eligibility of member of the State Board for re-appointment,

shall, *mutatis mutandis*, apply, so far as may be, in relation to assisted reproductive technology as they apply in relation to surrogacy, as if they are enacted under this Act.

Powers and functions of State Board. **8.** (1) Subject to the provisions of this Act and the rules and regulations made thereunder, the State Board shall have the responsibility to follow the policies and plans laid by the National Board for clinics and banks in the State.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the State Board, taking into account the recommendations, policies and regulations of the National Board, shall—

- (a) co-ordinate the enforcement and implementation of the policies and guidelines for assisted reproduction; and
- (b) such other powers and functions as may be prescribed.

(3) In the exercise of its functions under this Act, the State Board shall give such directions or pass such orders as directed by the National Board.

C. THE NATIONAL REGISTRY AND REGISTRATION AUTHORITY

Establishment of National Registry of clinics and banks. **9.** The Central Government may, by notification, establish for the purposes of this Act, a Registry to be called the National Registry of Clinics and Banks in India with effect from such date as may be specified in that notification.

Composition of National Registry. **10.** The National Registry referred to in section 9 shall consist of such scientific, technical, administrative and supportive staff and the terms and conditions of their service shall be such as may be prescribed.

Functions of National Registry. **11.** The National Registry shall discharge the following functions, namely:—

- (a) it shall act as a central database in the country through which the details of all the clinics and banks of the country including nature and types of services provided by them, outcome of the services and other relevant information shall be obtained on regular basis;

- (b) it shall assist the National Board in its functioning by providing the data generated from the central database of the Registry;

(c) the data generated from the National Registry shall be utilised by the National Board for making policies, guidelines and shall help in identifying new research areas and conducting research in the area of assisted reproduction and other related fields in the country; and

(d) such other functions as may be prescribed.

12. (1) The Central Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more Registration Authorities for each of the Union territories for the purposes of this Act.

Appointment
of
Registration
Authority.

(2) The State Government shall, within a period of ninety days from the date of commencement of this Act, by notification, appoint one or more Registration Authorities for the whole or any part of the State for the purposes of this Act.

(3) The Registration Authority, under sub-section (1) or sub-section (2), shall,—

(a) when appointed for the whole of the State or the Union territory, consist of—

(i) an officer of or above the rank of the Joint Secretary of the Health and Family Welfare Department—Chairperson, *ex officio*;

(ii) an officer of or above the rank of the Joint Director of the Health and Family Welfare Department — Vice Chairperson, *ex officio*;

(iii) an eminent woman representing women's organisation—member;

(iv) an officer of Law Department of the State or the Union territory concerned not below the rank of a Deputy Secretary—member, *ex officio*; and

(v) an eminent registered medical practitioner—member:

Provided that any vacancy occurring therein shall be filled within one month of the occurrence of such vacancy;

(b) when appointed for any part of the State or the Union territory, the officers of such other rank as the State Government or the Central Government, as the case may be, may deem fit.

(4) The members of Registration Authority, other than *ex officio* members, shall receive only compensatory travelling expenses for attending the meetings of such Authority.

13. The Registration Authority shall discharge the following functions, namely:—

Functions of
Registration
Authority.

(a) to grant, suspend or cancel registration of a clinic or bank;

(b) to enforce the standards to be fulfilled by the clinic or bank;

(c) to investigate complaints of breach of the provisions of this Act, rules and regulations made thereunder and take legal action as per provisions of this Act;

(d) to take appropriate legal action against the misuse of assisted reproductive technology by any person and also to initiate independent investigations in such matter;

(e) to supervise the implementation of the provisions of this Act and the rules and regulations made thereunder;

(f) to recommend to the National Board and State Boards about the modifications required in the rules and regulations in accordance with changes in technology or social conditions;

(g) to take action after investigation of complaints received by it against the assisted reproductive technology clinics or banks; and

(h) such other functions as may be prescribed.

Powers of
Registration
Authority.

14. (1) The Registration Authority shall exercise the powers in respect of the following matters, namely:—

- (a) summoning of any person who is in possession of any information relating to violation of the provisions of this Act and the rules and regulations made thereunder;
- (b) production of any document or material object relating to clause (a);
- (c) searching of any place suspected to be violating the provisions of this Act and the rules and regulations made thereunder; and
- (d) such other powers as may be prescribed.

(2) The Registration Authority shall maintain the details of registration of assisted reproductive technology clinics and banks, cancellation of registration, renewal of registration, grant of certificates to the commissioning couple and woman or any other matter pertaining to grant of licence and the like of the clinic or bank in such format as may be prescribed and submit the same to the National Board.

CHAPTER III

PROCEDURES FOR REGISTRATION

Registration
of assisted
reproductive
technology
clinic or
assisted
reproductive
technology
bank.

15. (1) No person shall establish any clinic or bank for undertaking assisted reproductive technology or to render assisted reproductive technology procedures in any form unless such clinic or bank is duly registered under this Act.

(2) Every application for registration under sub-section (1) shall be made to the National Registry through State Board in such form, manner and shall be accompanied by such fees as may be prescribed.

(3) Every clinic or bank which is conducting assisted reproductive technology, partly or exclusively shall, within a period of sixty days from the date of establishment of the National Registry, apply for registration:

Provided that such clinics and banks shall cease to conduct any such counselling or procedures on the expiry of six months from the date of commencement of this Act, unless such clinics and banks have applied for registration and is so registered separately or till such application is disposed of, whichever is earlier.

(4) No clinics or banks shall be registered under this Act, unless the Registration Authority is satisfied that such clinics and banks are in a position to provide such facilities and maintain such equipment and standards including specialised manpower, physical infrastructure and diagnostic facilities as may be prescribed.

Grant of
registration.

16. (1) On receipt of the application under sub-section (1) of section 15, the Registration Authority shall within a period of thirty days—

- (i) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number to the applicant; or
- (ii) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) If the Registration Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the assisted reproductive clinic or bank shall be deemed to have been registered, and the Registration Authority shall within a period of seven days from the expiry of the said period of thirty days specified under sub-section (1), provide a registration number to the applicant.

(3) The Registration Authority shall, within a period of one month of registration being granted under this section, intimate such registration to the State Board.

(4) The State Board shall maintain a record of all registrations applied for and granted under this section.

(5) No registration shall be granted unless the State Board has inspected the premises of the applicant.

(6) The registration granted under this section shall be valid for a period of five years from the date of registration granted by the Registration Authority.

17. The registration granted under section 16, may be renewed for a further period of five years by the Registration Authority, on an application made by the applicant, under such conditions, in such form and on payment of such fee as may be prescribed:

Renewal of registration.

Provided that no application for renewal of registration shall be rejected without giving an opportunity of being heard to the applicant.

18. (1) The Registration Authority may on receipt of a complaint, issue a notice to the clinic or bank to show cause as to why its registration should not be suspended or cancelled for the reasons mentioned in the notice.

Suspension or cancellation of registration.

(2) If after giving a reasonable opportunity of being heard to the clinic or bank, the Registration Authority is satisfied that there has been a breach of the provision of this Act or the rules or regulations made thereunder or if the data obtained from them periodically do not satisfy the provisions of this Act, the rules and regulations made thereunder, it may, without prejudice to any criminal action, suspend its registration for such period as it may deem fit or cancel its registration.

(3) On cancellation of registration, a copy of the cancellation letter shall be sent to the respective State Board and accordingly the State Board shall cancel the registration of such clinics and banks.

19. The clinic or bank or the commissioning couple or the woman may, within a period of thirty days from the date of receipt of the communication relating to order of rejection of application, suspension or cancellation of registration passed by the Registration Authority under section 16 or section 18, prefer an appeal against such order to—

Appeal.

(a) the State Government, where the appeal is against the order of the Registration Authority of a State;

(b) the Central Government, where the appeal is against the order of the Registration Authority of a Union territory,

in such manner as may be prescribed.

20. The National Board, the National Registry and the State Board shall have the power to,—

Power to inspect premises, etc.

(i) inspect, any premises relating to assisted reproductive technology; or

(ii) call for any document or material,

in exercise of their powers and discharge of their functions.

CHAPTER IV

DUTIES OF ASSISTED REPRODUCTIVE TECHNOLOGY CLINIC AND ASSISTED REPRODUCTIVE TECHNOLOGY BANK

21. The clinics and banks shall perform the following duties, namely:—

General duties of assisted reproductive technology clinics and banks.

(a) the clinics and banks shall ensure that commissioning couple, woman and donors of gametes are eligible to avail the assisted reproductive technology procedures subject to such criteria as may be prescribed;

(b) the clinics shall obtain donor gametes from the banks and such banks shall ensure that the donor has been medically tested for such diseases as may be prescribed;

(c) the clinics shall—

(i) provide professional counselling to commissioning couple and woman about all the implications and chances of success of assisted reproductive technology procedures in the clinic;

(ii) inform the commissioning couple and woman of the advantages, disadvantages and cost of the procedures, their medical side effects, risks including the risk of multiple pregnancy; and

(iii) help the commissioning couple or woman to arrive at an informed decision on such matters that would most likely be the best for the commissioning couple;

(d) the clinics shall make commissioning couple or woman, aware of the rights of a child born through the use of assisted reproductive technology;

(e) the clinics and banks shall ensure that information about the commissioning couple, woman and donor shall be kept confidential and the information about treatment shall not be disclosed to anyone except to the database to be maintained by the National Registry, in a medical emergency at the request of the commissioning couple to whom the information relates, or by an order of a court of competent jurisdiction;

(f) every clinic and every bank shall maintain a grievance cell in respect of matters relating to such clinics and banks and the manner of making a complaint before such grievance cell shall be such as may be prescribed;

(g) the clinics shall apply the assisted reproductive technology services,—

(i) to a woman above the legal age of marriage and below the age of fifty years;

(ii) to a man above the legal age of marriage and below the age of fifty-five years;

(h) the clinics shall issue to the commissioning couple or woman a discharge certificate stating details of the assisted reproductive technology procedure performed on the commissioning couple or woman;

(i) all clinics and banks shall co-operate and make available their premises for physical inspection by the National Board, National Registry and State Boards;

(j) all clinics and banks shall provide all information related to—

(i) enrolment of the commissioning couple, woman and gamete donors;

(ii) the procedure being undertaken; and

(iii) outcome of the procedure, complications, if any, to the National Registry periodically, in such manner as may be prescribed.

22. (1) The clinic shall not perform any treatment or procedure without—

(a) the written consent of all the parties seeking assisted reproductive technology;

(b) an insurance coverage of such amount and for such period as may be prescribed in favour of the oocyte donor by the commissioning couple or woman from an insurance company or an agent recognised by the Insurance Regulatory and Development Authority established under the provisions of the Insurance Regulatory and Development Authority Act, 1999.

Written
informed
consent.

(2) The clinics and banks shall not cryo-preserve any human embryos or gamete, without specific instructions and consent in writing from all the parties seeking assisted reproductive technology, in case of death or incapacity of any of the parties.

(3) The clinic shall not use any human reproductive material, except in accordance with the provisions of this Act to create a human embryo or use an *in-vitro* human embryo for any purpose without the specific consent in writing of all the concerned persons to whom the assisted reproductive technology relates.

(4) Any of the commissioning couple may withdraw his or her consent under sub-section (1), any time before the human embryos or the gametes are transferred to the concerned woman's uterus.

Explanation.—For the purposes of this section, the expressions—

(i) "cryo-preserve" means the freezing and storing of gametes, zygotes and embryos;

(ii) "insurance" means an arrangement by which a company, individual or commissioning couple undertake to provide a guarantee of compensation for specified loss, damage, complication or death of oocyte donor during the process of oocyte retrieval; and

(iii) "parties" includes the commissioning couple or woman and the donor.

23. The duties of clinics and banks while keeping the records relating to such clinics and banks are as under:—

(a) all clinics and banks shall maintain detailed records of all donor oocytes, sperm or embryos used or unused, the manner and technique of their use in such manner as may be prescribed;

(b) all clinics and banks shall, as and when the National Registry is established, submit by online,—

(i) all information available with them in regard to progress of the commissioning couple or woman; and

(ii) information about number of donors (sperm and oocyte), screened, maintained and supplied and the like to the National Registry within a period of one month from the date of receipt of such information;

(c) the records maintained under clause (a) shall be maintained for at least a period of ten years, upon the expiry of which the clinic and bank shall transfer the records to a central database of the National Registry:

Provided that if any criminal or other proceedings are instituted against any clinics or banks, the records and all other documents of such clinics and banks shall be preserved till the final disposal of such proceedings;

(d) in the event of the closure of any clinic or bank before the expiry of the period of ten years under clause (c), such clinic and bank shall immediately transfer the records to the central database of the National Registry; and

(e) all such records shall, at all reasonable times, be made available for inspection to the National Board or the National Registry or the State Board or to any other person authorised by the National Board in this behalf.

24. While using human gametes and embryos, the duties to be performed by the clinics and banks shall be as under:—

(a) the clinics shall harvest oocytes in such manner as may be specified by the regulations;

(b) the number of oocytes or embryos that may be placed in the uterus of a woman during the treatment cycle shall be such as may be specified by the regulations;

Duties of assisted reproductive technology clinics and banks to keep accurate records.

Duties of assisted reproductive technology clinics using human gametes and embryos.

(c) a woman shall not be treated with gametes or embryos derived from more than one man or woman during any one treatment cycle;

(d) a clinic shall never mix semen from two individuals for the procedures specified under this Act;

(e) the embryos shall not be split and used for twinning to increase the number of available embryos;

(f) the collection of gametes posthumously shall be done only if prior consent of the commissioning couple is available;

(g) the clinic shall not use ovum that are derived from a foetus, in any process of *in-vitro* fertilisation; and

(h) such other duties as may be prescribed.

Explanation.—For the purposes of this section, the expression—

(i) "fertilisation" means the penetration of the ovum by the spermatozoon and fusion of genetic materials resulting in the development of a zygote; and

(ii) "foetus" means a human organism during the period of its development beginning on the fifty-seventh day following fertilisation and ending at birth or abortion.

Pre-
implantation
Genetic
Diagnosis.

25. (1) The Pre-implantation Genetic testing shall be used to screen the human embryo for known, pre-existing, heritable or genetic diseases or for such other purposes as may be prescribed.

(2) The donation of an embryo after Pre-implantation Genetic Diagnosis to an approved research laboratory for research purposes shall be done only—

(a) with the approval of the commissioning couple or woman; and

(b) when the embryo suffers from pre-existing, heritable, life-threatening or genetic diseases.

(3) The National Board may lay down such other conditions as it deems fit in the interests of the Pre-implantation Genetic testing.

Explanation.—For the purposes of this section, the expression—

(i) "Pre-implantation Genetic Diagnosis" means the genetic diagnosis when one or both genetic parents has a known genetic abnormality and testing is performed on an embryo to determine if it also carries a genetic abnormality; and

(ii) "Pre-implantation Genetic testing" means a technique used to identify genetic defects in embryos created through *in-vitro* fertilisation before pregnancy.

Sex selection.

26. (1) Subject to the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the clinic shall not offer to provide a couple or woman with a child of a pre-determined sex. 57 of 1994.

(2) It is prohibited for anyone to do any act, at any stage, to determine the sex of the child to be born through the process of assisted reproductive technology to separate, or yield fractions enriched in sperm of X or Y variations.

(3) A person shall not knowingly provide, prescribe or administer anything that shall ensure or increase the probability that an embryo shall be of a particular sex, or that shall identify the sex of an *in-vitro* embryo, except to diagnose, prevent or treat a sex-linked disorder or disease.

Sourcing of
gametes by
assisted
reproductive
technology
banks.

27. (1) The screening of gamete donors, the collection, screening and storage of semen; and provision of oocyte donor, shall be done only by a bank registered as an independent entity under the provisions of this Act.

(2) The banks shall obtain—

(a) semen from males between twenty-one years of age and fifty-five years of age, both inclusive;

(b) oocytes from females between twenty-three years of age and thirty-five years of age; and

(c) examine the donors for such diseases, as may be prescribed.

(3) A bank shall not supply the sperm or oocyte of a single donor to more than one commissioning couple.

(4) An oocyte donor shall be an ever married woman having at least one live child of her own with a minimum age of three years and to donate oocytes only once in her life and not more than seven oocyte shall be retrieved from the oocyte donor.

(5) All unused oocytes shall be preserved by the banks for use on the same recipient, or given for research to an organisations registered under this Act after seeking written consent from the commissioning couple.

(6) A bank shall obtain all necessary information in respect of a sperm or oocyte donor, including the name, identity and address of such donor, in such manner as may be prescribed, and shall undertake in writing from such donor about the confidentiality of such information.

Explanation.—For the purposes of this section, the expressions—

(i) "oocyte" means naturally ovulating oocyte in the female genetic tract;

(ii) "retrieval" means a procedure of removing oocytes from the ovaries of a woman;

(iii) "screening" means the genetic test performed on embryos produced through *in-vitro* fertilisation.

28. (1) The standards for the storage and handling of gametes, gonadal tissues and human embryos in respect of their security, recording and identification shall be such as may be prescribed.

Storage and handling of human gametes and embryos.

(2) The gamete of a donor or embryo shall be stored for a period of not more than ten years and at the end of such period such embryo or gamete shall be allowed to perish or be donated to a research organisation registered under this Act for research purposes with the consent of the commissioning couple or individual, in such manner as may be prescribed.

29. The sale, transfer or use of gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within or outside India shall be prohibited except in the case of transfer of own gametes and embryos for personal use with the permission of the National Board.

Restriction on sale, etc., of human gametes, zygotes and embryos.

Explanation.—For the purposes of this section, the expression "zygote" means the fertilised oocyte prior to the first cell division.

30. (1) The use of any human gametes and embryos or their transfer to any country outside India for research shall be absolutely prohibited.

Research on human embryo and gametes.

(2) The research on human embryos or gametes within India shall be performed in such manner as may be prescribed.

31. (1) The child born through assisted reproductive technology shall be deemed to be a biological child of the commissioning couple and the said child shall be entitled to all the rights and privileges available to a natural child only from the commissioning couple under any law for the time being in force.

Rights of child born through assisted reproductive technology.

(2) A donor shall relinquish all parental rights over the child or children which may be born from his or her gamete.

CHAPTER V

OFFENCES AND PENALTIES

Sex selective assisted reproductive technology.

32. (1) The clinic, or bank or agent thereof, shall not issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement in any manner including internet, regarding facilities of sex selective assisted reproductive technology.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which shall not be less than five years but may extend to ten years or with fine which shall not be less than ten lakh rupees but may extend to twenty-five lakh rupees or with both.

Offences and penalties.

33. (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person shall not—

(a) abandon, disown or exploit or cause to be abandoned, disowned or exploited in any form the child or children born through assisted reproductive technology;

(b) sell human embryo or gametes, run an agency, a racket or an organisation for selling, purchasing or trading in human embryos or gametes;

(c) import or help in getting imported in whatsoever manner, the human embryos or human gametes;

(d) exploit the commissioning couple, woman or the gamete donor in any form;

(e) transfer human embryo into a male person or an animal;

(f) sell any human embryo or gamete for the purpose of research; or

(g) use any intermediates to obtain gamete donors or purchase gamete donors.

(2) Whoever contravenes the provisions of clauses (a) to (g) of sub-section (1), shall be punishable with a fine which shall not be less than five lakh rupees but may extend to ten lakh rupees for the first contravention and for subsequent contravention, shall be punishable with imprisonment for a term which shall not be less than eight years but may extend to twelve years and with fine which shall not be less than ten lakh rupees but may extend to twenty lakh rupees.

Punishment for contravention of provisions of Act or rules for which no specific punishment is provided.

34. Whoever contravenes any of the provisions of this Act or any rules made thereunder, for which no penalty has been provided in this Act shall be punishable as per sub-section (2) of section 33.

Cognizance of offences.

35. (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the National Board or the State Board or by an officer authorised by it.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

Offences to be cognizable and bailable.

36. All the offences under this Act shall be cognizable and bailable.

Offences by clinics or banks.

37. (1) Where an offence under this Act has been committed by any clinic or bank, the executive head of such clinic or bank shall be deemed to be guilty of an offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by any clinic or bank and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the executive head of the clinic or bank, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER VI

MISCELLANEOUS

38. (1) The Central Government may, from time to time issue to the National Board, the National Registry and the Registration Authority with respect to the Union territory, such directions as it may think necessary in the interest of the sovereignty and integrity of India, security of the State, friendly relation with foreign States, public order, decency or morality.

Power of Central Government to issue directions to National Board and National Registry.

(2) Without prejudice to the foregoing provisions of this Act, the National Board, the National Registry and the Registration Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government or the State Government, as the case may be, may give in writing to it from time to time:

Provided that the National Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under sub-section (1).

(3) If any dispute arises between the Central Government and the National Board as to whether a question is or is not a question of policy, the decision of the Central Government shall be final.

39. (1) The State Government may, from time to time issue to the State Board and to the Registration Authority with respect to the State Government such directions as it may think necessary in the interest of the sovereignty and integrity of India, security of the State, friendly relation with foreign States, public order, decency or morality.

Power of State Government to issue directions to State Board, etc.

(2) Without prejudice to the foregoing provisions of this Act, the State Board and the Registration Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the State Government may give in writing to it from time to time:

Provided that the State Board and the Registration Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under sub-section (1).

(3) If any dispute arises between the State Government and the State Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

40. (1) If the National Board, the National Registry or the State Board has reason to believe that an offence under this Act has been or is being committed at any facility using assisted reproductive technology, such Board or any officer authorised in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such Board or officer considers necessary, such facility using assisted reproductive technology and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize the same, if the said Board has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

Power to search and seize records, etc.

2 of 1974.

(2) The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

41. No suit, prosecution or other legal proceeding shall lie against the Central Government or the State Government or the National Board or the National Registry or the State Board or the Registration Authority or any other officer authorised by the Central

Protection of action taken in good faith.

Government or the State Government or the National Board or the National Registry or the State Board or the Registration Authority for anything which is done in good faith or intended to be done in pursuance of the provisions of this Act or the rules or regulations made thereunder.

Power to
make rules.

42. (1) The Central Government may by notification make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the other powers and functions of the National Board under clause (g) of section 5;

(b) other powers and functions of the State Board under clause (b) of sub-section (2) of section 8;

(c) the terms of office and other conditions of service of scientific, technical and other employees of the National Registry under section 10;

(d) the other functions of the National Registry under clause (d) of section 11;

(e) the other functions of the Registration Authority under clause (h) of section 13;

(f) the other powers to be exercised by the Registration Authority under clause (d) of sub-section (1) of section 14;

(g) the format for granting of licences to the clinic or bank by the Registration Authority under sub-section (2) of section 14;

(h) the manner and the form in which an application shall be made for registration and fee payable thereof under sub-section (2) of section 15;

(i) the facilities and equipments to be provided and maintained by the clinics and banks under sub-section (4) of section 15;

(j) the conditions, form and fee for application of renewal of the registration of clinic or bank under section 17;

(k) the period, the form and manner in which an appeal may be preferred to the State Government or the Central Government under section 19;

(l) the criteria for availing the assisted reproductive technology procedures under clause (a) of section 21;

(m) the medical examination of the diseases with respect to which the donor shall be tested under clause (b) of section 21;

(n) the manner of making a complaint before a grievance cell and the mechanism adopted by the clinic under clause (f) of section 21;

(o) the manner of providing information by the clinics and banks to the National Registry under sub-clause (iii) of clause (j) of section 21;

(p) the amount and the period of insurance coverage for oocyte donor under clause (b) of sub-section (1) of section 22;

(q) the manner of maintaining the records by the clinics and banks under clause (a) of section 23;

(r) the other duties of clinics under clause (h) of section 24;

(s) the other purposes for using of the Pre-implantation Genetic testing under sub-section (1) of section 25;

(t) examination of the donors by the assisted reproductive technology banks for diseases under clause (c) of sub-section (2) of section 27;

(u) the manner of obtaining information in respect of a sperm or oocyte donor by a bank under sub-section (6) of section 27;

(v) the standards for the storage and handling of gametes, human embryos in respect of their security, recording and identification under sub-section (1) of section 28;

(w) the manner of obtaining the consent of the commissioning couple or individual for perishing of the gametes of a donor or embryo under sub-section (2) of section 28;

(x) research on human embryo under sub-section (2) of section 30; and

(y) the manner of entry and search by the National Board, the National Registry or the State Board or any officer authorised by it under sub-section (1) of section 40.

43. (1) The National Board may, with the prior approval of the Central Government, by notification make regulations consistent with this Act and the rules made thereunder to carry out the provisions of the Act;

Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the manner of harvesting the oocytes under clause (a) of section 24;

(b) the number of oocytes or embryos under clause (b) of section 24; and

(c) any other matter which is required to be, specified by regulations or in respect of which provision is to be made by regulations.

44. Every rule or regulation made and notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or regulations or notifications, as the case may be, or both Houses agree that the rules or regulations or notifications, as the case may be, should not be made or issued, such rules or regulations or notifications, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

Laying of rules, regulations and notifications.

45. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and the Clinical Establishment (Registration and Regulation) Act, 2010 or of any other law for the time being in force.

Application of other laws not barred.

46. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Assisted reproductive technology (ART) has grown by leaps and bounds in the last few years. India has highest growths in the ART centres and the number of ART cycles performed every year. Assisted Reproductive Technology including in-vitro-fertilisation, has given hope to a multitude of persons suffering from infertility, but it has also introduced a plethora of legal, ethical and social issues.

2. India has over the years become one of the major centres of this global fertility industry, with reproductive medical tourism becoming a significant activity. Clinics in India offer nearly all the ART services—gamete donation, intrauterine insemination, in-vitro-fertilisation, intra cytoplasmic sperm injection, pre-implantation genetic diagnostic and gestational surrogacy. However, in spite of so much activity in India, there is yet no standardisation of protocols and reporting is still very inadequate. Furthermore, there is no law to regulate ART and it is regulated through guidelines.

3. The need to regulate the Assisted Reproductive Technology Services is mainly to protect the affected women and children from exploitation. The oocyte donor needs to be supported by an insurance cover. Multiple embryo implantation needs to be regulated and children born through ART need to be protected. The cryopreservation of sperm, oocytes and embryo by the ART Banks need to be regulated and the proposed legislation intends to make Pre Genetic Implantation Testing mandatory for the benefit of the child born through assisted reproductive technology.

4. There is a need to regulate ART clinics and banks by establishing the National Board, the State Boards, the National Registry and the State Registration Authorities for the regulation and supervision of assisted reproductive technology clinics and the assisted reproductive technology banks, for prevention of misuse and for safe and ethical practice of assisted reproductive technology services.

5. The proposed legislation, namely, the Assisted Reproductive Technology (Regulation) Bill, 2020 proposes to regulate the Assisted Reproductive Technology services in the country. The salient features of the Bill are as follows:—

(a) to define certain terms like "assisted reproductive technology", "assisted reproductive technology clinic", "commissioning couple", "Woman", etc.;

(b) to provide that the National Board and the State Board shall be the same Board as proposed in the Surrogacy Bill;

(c) to provide that the existing assisted reproductive technology clinics and the assisted reproductive technology banks, as on the date of the enactment of the proposed legislation, conducting assisted reproductive technology procedures partly or exclusively shall make an application to the Registration Authority within a period of sixty days from the date of establishment of the National Registry;

(d) to provide that the assisted reproductive technology services shall be available to a woman above the legal age of marriage and below the age of fifty years and a man above the legal age of marriage and below the age of fifty-five years;

(e) to provide that an oocyte donor shall be an ever married woman having at least one live child of her own with a minimum age of three years and to donate oocytes only once in her life and not more than seven oocyte shall be retrieved from the oocyte donor;

(f) to provide that the assisted reproductive technology clinics shall provide professional counselling to commissioning couple and woman about all the implications and chances of success of assisted reproductive technology procedures in the clinic; and they shall also inform the advantages, disadvantages and cost of the procedures, their medical side effects, risks including the risk of multiple pregnancy and any such other matter as may help the commissioning couple to arrive at an informed decision that would most likely be the best for the commissioning couple and woman;

(g) to provide that the assisted reproductive technology clinics and assisted reproductive technology banks shall ensure that commissioning couple, woman and donors of gametes are eligible to avail of assisted reproductive technology procedures;

(h) to provide for offences and penalties for the contravention of its provisions.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 12th March, 2020.

DR. HARSH VARDHAN.

Notes on clauses

Clause 1.—This clause relates to short title and commencement of the proposed legislation.

Clause 2.—This clause contains the definitions of various expressions used in the proposed legislation.

Clause 3.—This clause seeks to provide that the National Board to be constituted under sub-section (1) of section 15 of the Surrogacy Act shall be the National Board for the purposes of the proposed legislation.

Clause 4.—This clause seeks to provide that subject to the provisions of the proposed legislation and the rules made thereunder, the provisions of the Surrogacy Act relating to—

- (i) constitution of the National Surrogacy Board;
 - (ii) term of office of Members of the National Board;
 - (iii) meetings of the National Board;
 - (iv) vacancies, etc., not to invalidate proceedings of the National Board;
 - (v) disqualifications for appointment as Member of the National Board;
 - (vi) temporary association of persons with the National Board for particular purposes;
 - (vii) authentication of orders and other instruments of the National Board;
- and
- (viii) eligibility of Members of the National Board for re-appointment, shall *mutatis mutandis*, apply, so far as may be, in relation to assisted reproductive technology as they apply in relation to surrogacy, as if they are enacted under the proposed legislation.

Clause 5.—This clause relates to powers and functions of the National Board and seeks to provide that the National Board shall exercise and discharge the following powers and functions, namely:—

- (a) to advise the Central Government on policy matters relating to the assisted reproductive technology;
 - (b) to review and monitor the implementation of the proposed legislation, rules and regulations made thereunder and recommend to the Central Government, any suitable changes therein;
 - (c) to lay down code of conduct to be observed by persons working at clinics, to set the minimum standards of physical infrastructure, laboratory and diagnostic equipment and expert manpower to be employed by clinics and banks;
 - (d) to oversee the performance of various bodies constituted under the proposed legislation and take appropriate steps to ensure their effective performance;
 - (e) to supervise the functioning of the National Registry and liaison with the State Boards;
 - (f) to pass orders as per the provisions made under the proposed legislation;
- and
- (g) such other powers and functions as may be prescribed by rules.

Clause 6.—This clause seeks to provide that the State Board to be constituted under sub-section (1) of section 24 of the Surrogacy Act shall be the State Board for the purposes of the proposed legislation.

Clause 7.—This clause seeks to provide that subject to the provisions of the proposed legislation and the rules made thereunder, the provisions of the Surrogacy Act relating to—

- (i) constitution of the State Surrogacy Board;
- (ii) composition of the State Board;
- (iii) term of office of members of the State Board;
- (iv) meetings of the State Board;
- (v) vacancies, etc., not to invalidate proceedings of the State Board;
- (vi) disqualifications for appointment as member of the State Board;
- (vii) temporary association of persons with the State Board for particular purposes;
- (viii) authentication of orders and other instruments of the State Board; and
- (ix) eligibility of member of the State Board for re-appointment, shall *mutatis mutandis*, apply, so far as may be, in relation to assisted reproductive technology as they apply in relation to surrogacy, as if they are enacted under the proposed legislation.

Clause 8.—This clause seeks to provide the powers and functions of the State Board, *inter alia*,—

- (a) co-ordinate the enforcement and implementation of the policies and guidelines for assisted reproduction; and
- (b) such other powers and functions as may be prescribed by rules.

Sub-clause (3) of this clause seeks to provide that, in exercise of its functions under the proposed legislation, the State Board shall give such directions or pass such orders as directed by the National Board.

Clause 9.— This clause seeks to provide for the establishment of the National Registry of Clinics and Banks.

Clause 10.—This clause seeks to lay down the composition of the National Registry.

Clause 11.—This clause seeks to lay down the functions of the National Registry.

Clause 12.—This clause seeks to provide for the appointment of the Registration Authority.

Clause 13.—This clause seeks to provide for the functions of the Registration Authority.

Clause 14.—This clause seeks to lay down the powers of the Registration Authority.

Clause 15.—This clause seeks to provide for the registration of the assisted reproductive technology clinic or assisted reproductive technology bank.

Clause 16.—This clause seeks to provide for the registration of the assisted reproductive clinic or bank.

Clause 17.—This clause seeks to provide for the renewal of the registration granted under clause 16.

Clause 18.—This clause seeks to provide for the suspension or cancellation of the registration granted to clinics and banks.

Clause 19.—This clause seeks to provide for appeal by the clinic or bank or the commissioning couple or the woman.

Clause 20.—This clause lays down the power of the National Board, the National Registry, the State Board and the Registration Authority.

Clause 21.—This clause lays down the general duties of the assisted reproductive technology clinics and banks.

Clause 22.—This clause seeks, *inter alia*, to provide for the written consent of all the parties seeking assisted reproductive technology.

Clause 23.—This clause seeks to lay down the duties of the assisted reproductive technology clinics and banks to keep accurate records.

Clause 24.—This clause seeks to lay down the duties of the assisted reproductive technology clinics using human gametes and embryos.

Clause 25.—This clause relates to Pre-implantation Genetic Diagnosis.

Sub-clause (1) of this clause seeks to provide that the Pre-implantation Genetic testing shall be used to screen the human embryo for known, pre-existing, heritable or genetic diseases or for such other purposes as may be prescribed by rules.

Sub-clause (2) of this clause seeks to provide that the donation of an embryo after Pre-implantation Genetic Diagnosis to an approved research laboratory for research purposes shall be done only (a) with the approval of the commissioning couple; and (b) when the embryo suffers from pre-existing, heritable, life-threatening or genetic diseases.

Sub-clause (3) of this clause seeks to provide that the National Board may lay down such other conditions as it deems fit in the interests of the Pre-implantation Genetic testing.

Clause 26.—This clause seeks to prohibit sex selection.

Clause 27.—This clause seeks to provide for the sourcing of gametes by assisted reproductive technology banks.

Clause 28.—This clause seeks to provide for the storage and handling of human gametes and embryos.

Clause 29.—This clause seeks to provide that the sale, transfer or use of gametes, zygotes and embryos, or any part thereof or information related thereto, directly or indirectly to any party within or outside India shall be prohibited except in the case of transfer of own gametes and embryos for personal use with the permission of the National Board.

Clause 30.—This clause seeks to provide for the research on human embryo and gametes.

Clause 31.—This clause seeks to provide for the rights of child born through assisted reproductive technology.

Clause 32.—This clause seeks, *inter alia*, to prohibit the sex selective assisted reproductive technology.

Clause 33.—This clause seeks to provide for the offences and penalties.

Clause 34.—This clause seeks to provide for the punishment for contravention of the provisions of the proposed legislation or rules for which no specific punishment is provided.

Clause 35.—This clause provides for cognizance of offences.

Clause 36.—This clause seeks to provide that all the offences under the proposed legislation shall be cognizable and bailable.

Clause 37.—This clause seeks to provide for the offences by clinics or banks.

Clause 38.—This clause seeks to lay down the power of the Central Government to issue directions, *inter alia*, to the National Board.

Clause 39.—This clause seeks to lay down the power of the State Government to issue directions, *inter alia*, to the State Board.

Clause 40.—This clause seeks to provide for the power to search and seize records, etc.

Clause 41.—This clause seeks to provide for the protection of action taken in good faith.

Clause 42.—This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation.

Clause 43.—This clause empowers the National Board to make regulations consistent with the proposed legislation and the rules made thereunder.

Clause 44.—This clause seeks to require that the rules, regulations and notifications made or issued under the proposed legislation shall be laid before Parliament.

Clause 45.—This clause seeks to provide that the application of the other laws shall not be barred.

Clause 46.—This clause seeks to provide for the power of the Central Government to remove difficulties.

FINANCIAL MEMORANDUM

The Assisted Reproductive Technology (Regulation) Bill, 2020 has been proposed for the regulation and supervision of the assisted reproductive technology clinics and the assisted reproductive technology banks, prevention of misuse, safe and ethical practice of assisted reproductive technology services. The proposed legislation, is framed in such a manner that it ensures effective regulation with the creation of the National Board, National Registry, State Boards and Registration Authorities at the Centre and State / Union-territory level.

2. Clause 3 of the Bill provides that the National Board to be constituted under sub-section (1) of section 15 of the Surrogacy Act shall be the National Board for the purposes of the proposed legislation.

3. Clause 6 of the Bill provides that the State Board to be constituted under sub-section (1) of section 24 of the Surrogacy Act shall be the State Board for the purposes of the proposed legislation.

4. Clause 9 of the Bill provides that the Central Government may, by notification, establish for the purposes of the proposed legislation, a Registry to be called the National Registry of Clinics and Banks in India.

5. Sub-clause (1) of clause 12 of the Bill provides that the Central Government shall, within a period of ninety days from the date of commencement of the proposed legislation, by notification, appoint one or more Registration Authorities for each of the Union territories for the purposes of the proposed legislation.

6. Sub-clause (iii) of clause 4, sub-clause (iv) of clause 7 and sub-clause (4) of clause 12 of the Bill respectively provides that the members of the National Board, State Board and Registration Authority, other than *ex officio* members shall receive only compensatory travelling expenses for attending the meetings.

7. Clause 10 of the Bill provides that the National Registry referred to in section 9 shall consist of scientific, technical, administrative and supportive staff.

8. There will not be any financial implications except for the meetings of the National Board, the State Board, the Registration Authority and the aforesaid staff of the National Registry which will be met out of the regular budget of the Central Government and the State Governments.

9. The Bill does not involve any other expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 42 of the Bill seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation in respect of matters, which shall, *inter alia*, include—(a) the other powers and functions of the National Board under clause (g) of section 5; (b) the other powers and functions of the State Board under clause (b) of sub-section (2) of section 8; (c) the terms of office and other conditions of service of scientific, technical and other employees of the National Registry under section 10; (d) the other functions of the National Registry under clause (d) of section 11; (e) the other functions of the Registration Authority under clause (h) of section 13; (f) the other powers to be exercised by the Registration Authority under clause (d) of sub-section (1) of section 14; (g) the format for granting of licenses to the clinic or bank by the Registration Authority under sub-section (2) of section 14; (h) the manner and the form in which an application shall be made for registration and fee payable thereof under sub-section (2) of section 15; (i) the facilities and equipments to be provided and maintained by the clinics and banks under sub-section (4) of section 15; (j) the conditions, form and fee for application of renewal of the registration of clinic or bank under section 17; (k) the period, the form and manner in which an appeal may be preferred to the State Government or the Central Government under section 19; (l) the criteria for availing the assisted reproductive technology procedures under clause (a) of section 21; (m) the medical examination of the diseases with respect to which the donor shall be tested under clause (b) of section 21; (n) the manner of making a complaint before a grievance cell and the mechanism adopted by the clinic under clause (f) of section 21; (o) the manner of providing information by the clinics and banks to the National Registry under sub-clause (iii) of clause (j) of section 21; (p) the amount and the period of insurance coverage for oocyte donor under clause (b) of sub-section (1) of section 22; (q) the manner of maintaining the records by the clinics and banks under clause (a) of section 23; (r) the other duties of clinics under clause (h) of section 24; (s) the other purposes for using of the Pre-implantation Genetic testing under sub-section (1) of section 25; (t) examination of the donors by the assisted reproductive technology banks for diseases under clause (c) of sub-section (2) of section 27; (u) the manner of obtaining information in respect of a sperm or oocyte donor by a bank under sub-section (6) of section 27; (v) the standards for the storage and handling of gametes, human embryos in respect of their security, recording and identification under sub-section (1) of section 28; (w) the manner of obtaining the consent of the commissioning couple or individual for perishing of the gametes of a donor or embryo under sub-section (2) of section 28; (x) research on human embryo under sub-section (2) of section 30; (y) the manner of entry and search by the National Board, the National Registry or the State Board or any officer authorised by it under sub-section (1) of section 40.

2. Clause 43 of the Bill seeks to empower the National Board, with the prior approval of the Central Government, by notification, to make regulations consistent with the proposed legislation and the rules made thereunder to provide for— (a) the manner of harvesting the oocytes under clause (a) of section 24; (b) the number of oocytes or embryos under clause (b) of section 24; and (c) any other matter which is required to be, specified by regulations or in respect of which provision is to be made by regulations.

3. The matters in respect of which the aforementioned rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 98 OF 2020

A Bill to ensure financial stability and promote competitiveness in Indian financial markets by providing enforceability of bilateral netting of qualified financial contracts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

Short title and
commencement.

1. (1) This Act may be called the Bilateral Netting of Qualified Financial Contracts Act, 2020.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. (I) In this Act, unless the context otherwise requires,—

Definitions.

(a) "administration" means proceedings of the nature of placing under administration and includes imposition of moratorium, reorganisation, winding up, liquidation (including any compulsory winding up procedure or proceeding), insolvency, bankruptcy, composition with creditors, receivership, conservatorship or any proceedings of nature similar to or resulting in any of the foregoing, initiated or commenced under any law for the time being in force, against a qualified financial market participant;

(b) "administration practitioner" means the liquidator, receiver, trustee, conservator, resolution professional or any other person or entity, by whatever name called, which administers the affairs of a party subject to administration under any law for the time being in force;

(c) "authority" means the Central Government or any of the regulatory authorities as specified in the First Schedule;

(d) "banking institution" means,—

(i) scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934; and

(ii) any other bank as the Reserve Bank of India may specify;

(e) "close-out netting" means a process involving termination of obligations under a qualified financial contract with a party in default and subsequent combining of positive and negative replacement values into a single net payable or receivable as set out in section 6;

(f) "collateral" means,—

(i) money, in the form of cash, credited to an account in any currency, or a similar claim for repayment of money, such as a money market deposit;

(ii) securities of any kind, including debt and equity securities;

(iii) guarantees, letters of credit and obligations to reimburse; and

(iv) any asset commonly used as collateral under any law for the time being in force;

(g) "collateral arrangement" means any margin, collateral or security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial contracts to which a netting agreement applies, and includes,—

(i) a pledge or any other form of security interest in collateral, whether possessory or non-possessory;

(ii) a title transfer collateral arrangement; and

(iii) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial contracts, in respect of those qualified financial contracts; or a netting agreement;

(h) "insolvent party" means the party to a qualified financial contract in relation to which insolvency, winding up, liquidation, resolution, administration or similar proceedings have been instituted under any law for the time being in force in India or under the laws of any other country, including of its incorporation;

(i) "margin" means the amount, form and type of collateral required as a performance bond for the purchase, sale or carrying of a qualified financial contract and includes—

(A) initial margin which protects the transacting parties from potential future exposure likely to arise from future changes in the mark-to-market value of the qualified financial contract during the close-out and replace the position in the event of counterparty default; and

(B) variation margin which protects the transacting parties from the current exposure that has already been incurred by one of the parties from changes in the mark-to-market value of the qualified financial contract after the transaction has been executed;

(j) "netting" means determination of net claim or obligations after setting off or adjusting all the claims or obligations based or arising from mutual dealings between the parties to qualified financial contracts and includes close-out netting;

(k) "netting agreement" means an agreement that provides for netting, and includes,—

(i) an agreement that provides for the netting of amounts due under two or more netting agreements; and

(ii) a collateral arrangement relating to or forming part of a netting agreement;

(l) "non-insolvent party" means the party to a qualified financial contract that is not the insolvent party;

(m) "notification" means a notification published in the Official Gazette and the term "notify" shall be construed accordingly;

(n) "qualified financial contract" means a qualified financial contract notified by the authority under clause (a) of section 4;

(o) "qualified financial market participant" includes,—

(i) a banking institution, or a non-banking financial company, or such other financial institution which is subject to regulation or prudential supervision by the Reserve Bank of India;

(ii) an individual, partnership firm, company, or any other person or body corporate whether incorporated under any law for the time being in force in India or under the laws of any other country and includes any international or regional development bank or other international or regional organisation;

(iii) an insurance or reinsurance company which is subject to regulation or prudential supervision by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(iv) a pension fund regulated by the Pension Fund Regulatory and Development Authority established under the Pension Fund Regulatory and Development Authority Act, 2013;

23 of 2013.

(v) a financial institution regulated by the International Financial Services Centres Authority established under the International Financial Services Centres Authority Act, 2019; and

50 of 2019.

(vi) any other entity notified by the relevant authority under clause (b) of section 4;

(p) "Schedule" means the First Schedule or the Second Schedule to this Act;

(q) "title transfer collateral arrangement" means a margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether by outright sale or by way of security, including a sale and repurchase agreement, securities lending agreement, securities, buy or sell-back agreement or an irregular pledge.

(2) Words and expressions used but not defined in this Act and defined in the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Banking Regulation Act, 1949, the Securities Contracts (Regulation) Act, 1956, the Banking Companies (Acquisition

2 of 1934.
4 of 1938.
10 of 1949.
42 of 1956.

5 of 1970.
40 of 1980.
15 of 1992.
42 of 1999.
41 of 1999.
51 of 2007.
18 of 2013.
23 of 2013.
31 of 2016.

and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the Securities and Exchange Board of India Act, 1992, the Foreign Exchange Management Act, 1999, the Insurance Regulatory and Development Authority Act, 1999, the Payment and Settlement Systems Act, 2007, the Companies Act, 2013, the Pension Fund Regulatory and Development Authority Act, 2013 and the Insolvency and Bankruptcy Code, 2016, shall have the meanings respectively assigned to them in those enactments.

CHAPTER II

APPLICATION OF ACT

3. The provisions of this Act shall apply to a qualified financial contract entered into on a bilateral basis between qualified financial market participants, either under a netting agreement or otherwise, where at least one of such participants shall be an entity regulated by an authority specified in the First Schedule. Applicability of Act.

4. The relevant authority may, by notification,— Powers of authority.

(a) designate any bilateral agreement or contract or transaction, or type of contract regulated by it, as qualified financial contract:

2 of 1934.

Provided that the contract, so designated under this clause, shall not include any contract,—

(i) entered into between such parties and on such terms as the Central Government may, by notification, specify; or

42 of 1956.
51 of 2007.

(ii) entered into on multilateral basis in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 and the Payment and Settlement Systems Act, 2007;

(b) specify any entity regulated by it, as a qualified financial market participant to deal in qualified financial contracts.

5. (1) Netting of the qualified financial contract shall be enforceable— Enforceability of netting.

(a) where such contract is entered into with a netting agreement, in accordance with the terms of the netting agreement:

Provided that the inclusion of any non-qualified financial contract in a netting agreement shall not invalidate the enforceability of netting of qualified financial contract under such agreement; or

(b) where such contract is entered into without a netting agreement, in accordance with the provisions of section 6.

(2) A qualified financial contract shall not be void and shall be deemed never to have been void or unenforceable by reason of any law for the time being in force.

(3) Close-out netting of a qualified financial contract shall be enforceable against an insolvent party, and, wherever applicable, against a guarantor or other person providing collateral or security for a party and shall not be affected or stopped or otherwise limited by:—

(i) the appointment of, or any application for the appointment of, an administration practitioner, or

(ii) applicability of any provision of law relating to administration, or

(iii) any other provision of law that may be applicable to an insolvent party.

(4) Where a qualified financial market participant is subject to administration, then notwithstanding,—

(i) any stay, injunction, avoidance, moratorium or similar proceedings or any other order of a court, tribunal or authority, or

(ii) any order of adjudication or dissolution or winding up or resolution or insolvency, or

(iii) any rule, regulation, scheme, direction, guideline, circular or order,

made or issued under any law for the time being in force, close-out netting shall be applicable and nothing contained therein shall affect the validity of close-out netting under this Act.

(5) The amount payable or other claims to be made in accordance with the close-out netting under this Act shall be final, irrevocable and binding upon the parties to a qualified financial contract and upon the administration practitioner, of the party in administration.

CHAPTER III

INVOCATION OF CLOSE-OUT NETTING

Invocation of
close-out
netting.

6. (1) Close-out netting may be commenced by a notice given by one party to the other party of a qualified financial contract upon the occurrence of an event of default with respect to the other party or a termination event that may, in certain circumstances, occur automatically as specified in the netting agreement:

Provided that where any one of the parties to a netting agreement is subject to administration, then no prior notice to or consent of the party in insolvency, winding up, liquidation, administration or resolution proceeding, or to the administration practitioner of such proceeding, shall be required.

Explanation.—For the purposes of this sub-section,—

(i) "event of default" means failure to pay or deliver or honour the obligations of a qualified financial contract, or bankruptcy, or any other event as may be agreed upon by the parties in the agreement; and

(ii) "termination event" means the occurrence of any event mentioned in the netting agreement which gives one or both parties the right to terminate relevant transactions under that agreement.

(2) The parties to a qualified financial contract shall ensure that all obligations owed by one party to another party under a qualified financial contract are reduced to or replaced with single net amount which has the following effect, namely:—

(a) the termination, liquidation or acceleration of any present or future payment or delivery rights or obligations arising under or in connection with any one or more qualified financial contracts to which a netting agreement applies;

(b) the calculation or estimation of a close-out value, market value, liquidation value or replacement value in respect of each right and obligation or group of rights and obligations terminated, liquidated or accelerated under clause (a) and the conversion of each such value into a single currency; and

(c) the determination of the net balance of the values calculated under clause (b), whether by operation of set-off or otherwise, giving rise to the obligation of one party to pay an amount equal to the net balance to the other party.

(3) Without prejudice to the provisions of any law for the time being in force requiring the realisation, appropriation or liquidation of collateral, and unless otherwise agreed by the parties, the realisation, appropriation or liquidation of collateral under a collateral arrangement shall take effect without any requirement of prior notice to, or consent from, any party, person or entity.

(4) Close-out netting shall be applicable to all qualified financial market participants who are parties to a qualified financial contract notwithstanding anything to the contrary contained in any law specified in the Second Schedule or any other law pursuant to which any qualified financial market participant has been incorporated, constituted or is regulated.

7. (1) Where parties to the qualified financial contract enter into a netting agreement, the net amount payable under the close-out netting shall be determined in accordance with the terms of the netting agreement entered into by the parties.

Net amount.

(2) In the absence of the netting agreement, where the parties to a qualified financial contract fail to agree on the sum with regard to the net amount payable under the close-out netting, such sum shall be determined through arbitration.

CHAPTER IV

LIMITATIONS ON POWERS OF ADMINISTRATION PRACTITIONER

8. The administration practitioner shall not render or seek to render ineffective,—

Limitations on powers of administration practitioner.

(a) any transfer, substitution or exchange of cash, collateral or any other interests under or in connection with a netting agreement between the insolvent party and the non-insolvent party to a qualified financial contract; or

(b) any payment or delivery obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement on the grounds of it constituting a preference including a fraudulent preference or a transfer for undervalue, including during a suspect period by the insolvent party to the non-insolvent party.

Explanation.—For the purposes of this clause, "suspect period" means the relevant period referred to in sub-section (4) of section 43 of the Insolvency and Bankruptcy Code, 2016 in respect of "preferential transaction" and in sub-section (1) of section 46 of the said Code in respect of "undervalued transaction".

31 of 2016.

CHAPTER V

MISCELLANEOUS

9. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or otherwise amend the First Schedule or the Second Schedule and thereupon, the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

Power to amend Schedules.

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

10. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Provisions of this Act to override other laws.

11. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE FIRST SCHEDULE

[See sections 2(1) (c), (p) and 9(1)]

Sl. No.	Name of the authority	Act No.
(1)	(2)	(3)
1.	The Reserve Bank of India, established under section 3 of the Reserve Bank of India Act, 1934.	
2.	The Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992.	
3.	The Insurance Regulatory and Development Authority of India, established under section 3 of the Insurance Regulatory and Development Authority Act, 1999.	
4.	The Pension Fund Regulatory and Development Authority, established under section 3 of the Pension Fund Regulatory and Development Authority Act, 2013.	
5.	The International Financial Services Centres Authority established under section 4 of the International Financial Services Centres Authority Act, 2019.	

THE SECOND SCHEDULE

[See sections 6(4) and 9(1)]

Sl. No.	Name of the enactment	Act No.
(1)	(2)	(3)
1.	The Reserve Bank of India Act, 1934.	2 of 1934.
2.	The Insurance Act, 1938.	4 of 1938.
3.	The Banking Regulation Act, 1949.	10 of 1949.
4.	The State Bank of India Act, 1955.	23 of 1955.
5.	The Securities Contracts (Regulation) Act, 1956.	42 of 1956.
6.	The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.	5 of 1970.
7.	The Regional Rural Bank Act, 1976.	21 of 1976.
8.	The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.	40 of 1980.
9.	The Securities and Exchange Board of India Act, 1992.	15 of 1992.
10.	The Foreign Exchange Management Act, 1999.	42 of 1999.
11.	The Insurance Regulatory and Development Authority Act, 1999.	41 of 1999.
12.	The Payment and Settlement Systems Act, 2007.	51 of 2007.
13.	The Companies Act, 2013.	18 of 2013.
14.	The Pension Fund Regulatory and Development Authority Act, 2013.	23 of 2013.
15.	The Insolvency and Bankruptcy Code, 2016.	31 of 2016.

STATEMENT OF OBJECTS AND REASONS

Netting enables two counterparties in a bilateral financial contract to offset claims against each other to determine a single net payment obligation due from one counterparty to other in the event of default. In the absence of a legal framework for bilateral netting, banks are forced to measure credit exposure to a counterparty for over the counter (OTC) derivative contracts based on gross basis and not net basis. This situation significantly increases credit risk exposure and systemic risk in financial market in the event of default of a counterparty, besides trapping significant amount of capital unproductively by banks. An unambiguous legal framework for enforceability of close-out netting would reduce credit exposure of banks and other financial institutions from gross to net exposure, resulting in substantial capital saving on such exposure and reducing the overall systemic risks, thus contributing to the financial stability.

2. Further, due to the emerging global consensus of imposition of margins for non-centrally cleared OTC derivatives, it has become necessary for India to implement exchange of margin system for OTC derivatives to improve stability and resilience of our financial system. Such margin on gross basis would make the OTC derivative market very costly and may seriously disrupt the OTC derivatives market, as such derivatives account for a significant part of the total derivatives market. The law on bilateral netting would be a significant enabler for efficient margining. The capital saving would enable banks to provide price efficiency in offering hedging instruments to businesses in India, and catalyse the corporate bond market through developing the credit default swap market. It is expected that a law on bilateral netting of financial transactions would further develop the financial market in India.

3. The Bilateral Netting of Qualified Financial Contracts Bill, 2020, *inter alia*, seeks to provide for—

(a) designation of any bilateral agreement or contract or transaction, or type of contract, as qualified financial contract by the Central Government or any of the regulatory authorities as specified in the First Schedule;

(b) enforceability of netting of a qualified financial contract;

(c) invocation of close-out netting which may be commenced by a notice given by one party to the other party of a qualified financial contract upon the occurrence of an event of default with respect to the other party or a termination event that may, in certain circumstances, occur automatically as specified in the netting agreement;

(d) determination of the net amount payable under the close-out netting in accordance with the terms of the netting agreement entered into by the parties and in the absence of the netting agreement, where the parties to a qualified financial contract fail to agree on the sum with regard to the net amount payable under the close-out netting, determination of such sum through arbitration;

(e) imposing of certain limitations on powers of administration practitioner.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 20th March, 2020.

NIRMALA SITHARAMAN.

BILL No. 113 OF 2020

A Bill to provide for the creation of an ecosystem where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers' produce which facilitates remunerative prices through competitive alternative trading channels; to promote efficient, transparent and barrier-free inter-State and intra-State trade and commerce of farmers' produce outside the physical premises of markets or deemed markets notified under various State agricultural produce market legislations; to provide a facilitative framework for electronic trading and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020.

Short title and commencement.

(2) It shall be deemed to have come into force on the 5th day of June, 2020.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “electronic trading and transaction platform” means a platform set up to facilitate direct and online buying and selling for conduct of trade and commerce of farmers’ produce through a network of electronic devices and internet applications, where each such transaction results in physical delivery of farmers’ produce;

(b) “farmer” means an individual engaged in the production of farmers’ produce by self or by hired labour or otherwise, and includes the farmer producer organisation;

(c) “farmers’ produce” means,—

(i) foodstuffs including cereals like wheat, rice or other coarse grains, pulses, edible oilseeds, oils, vegetables, fruits, nuts, spices, sugarcane and products of poultry, piggery, goatery, fishery and dairy intended for human consumption in its natural or processed form;

(ii) cattle fodder including oilcakes and other concentrates; and

(iii) raw cotton whether ginned or unginned, cotton seeds and raw jute;

(d) “farmer producer organisation” means an association or group of farmers, by whatever name called,—

(i) registered under any law for the time being in force; or

(ii) promoted under a scheme or programme sponsored by the Central or the State Government;

(e) “inter-State trade” means the act of buying or selling of farmers’ produce, wherein a trader of one State buys the farmers’ produce from the farmer or a trader of another State and such farmers’ produce is transported to a State other than the State in which the trader purchased such farmers’ produce or where such farmers’ produce originated;

(f) “intra-State trade” means the act of buying or selling of farmers’ produce, wherein a trader of one State buys the farmers’ produce from a farmer or a trader of the same State in which the trader purchased such farmers’ produce or where such farmers’ produce originated;

(g) “notification” means a notification published by the Central Government or the State Governments in the Official Gazette and the expressions “notify” and “notified” shall be construed accordingly;

(h) “person” includes—

(a) an individual;

(b) a partnership firm;

(c) a company;

(d) a limited liability partnership;

(e) a co-operative society;

(f) a society; or

(g) any association or body of persons duly incorporated or recognised as a group under any ongoing programmes of the Central Government or the State Government;

(i) “prescribed” means prescribed by the rules made by the Central Government under this Act;

(j) “scheduled farmers’ produce” means the agricultural produce specified under any State APMC Act for regulation;

(k) “State” includes the Union territory;

(l) “State APMC Act” means any State legislation or Union territory legislation in force in India, by whatever name called, which regulates markets for agricultural produce in that State;

(m) “trade area” means any area or location, place of production, collection and aggregation including—

(a) farm gates;

(b) factory premises;

(c) warehouses;

(d) silos;

(e) cold storages; or

(f) any other structures or places,

from where trade of farmers’ produce may be undertaken in the territory of India but does not include the premises, enclosures and structures constituting—

(i) physical boundaries of principal market yards, sub-market yards and market sub-yards managed and run by the market committees formed under each State APMC Act in force in India; and

(ii) private market yards, private market sub-yards, direct marketing collection centres, and private farmer-consumer market yards managed by persons holding licenses or any warehouses, silos, cold storages or other structures notified as markets or deemed markets under each State APMC Act in force in India;

(n) “trader” means a person who buys farmers’ produce by way of inter-State trade or intra-State trade or a combination thereof, either for self or on behalf of one or more persons for the purpose of wholesale trade, retail, end-use, value addition, processing, manufacturing, export, consumption or for such other purpose.

CHAPTER II

PROMOTION AND FACILITATION OF TRADE AND COMMERCE OF FARMERS’ PRODUCE

3. Subject to the provisions of this Act, any farmer or trader or electronic trading and transaction platform shall have the freedom to carry on the inter-State or intra-State trade and commerce in farmers’ produce in a trade area.

Freedom to conduct trade and commerce in a trade area.

4. (1) Any trader may engage in the inter-State trade or intra-State trade of scheduled farmers’ produce with a farmer or another trader in a trade area:

Trade and commerce of scheduled farmers’ produce.

Provided that no trader, except the farmer producer organisations or agricultural cooperative society, shall trade in any scheduled farmers’ produce unless such a trader has a permanent account number allotted under the Income-tax Act, 1961 or such other document as may be notified by the Central Government.

(2) The Central Government may, if it is of the opinion that it is necessary and expedient in the public interest so to do, prescribe a system for electronic registration for a trader, modalities of trade transaction and mode of payment of the scheduled farmers’ produce in a trade area.

(3) Every trader who transacts with farmers shall make payment for the traded scheduled farmers' produce on the same day or within the maximum three working days if procedurally so required subject to the condition that the receipt of delivery mentioning the due payment amount shall be given to the farmer on the same day:

Provided that the Central Government may prescribe a different procedure of payment by farmer produce organisation or agriculture co-operative society, by whatever name called, linked with the receipt of payment from the buyers.

Electronic trading and transaction platform.

5. (1) Any person (other than individual), having a permanent account number allotted under the Income-tax Act, 1961 or such other document as may be notified by the Central Government or any farmer producer organisation or agricultural cooperative society may establish and operate an electronic trading and transaction platform for facilitating inter-State or intra-State trade and commerce of scheduled farmers' produce in a trade area:

43 of 1961.

Provided that the person establishing and operating an electronic trading and transaction platform shall prepare and implement the guidelines for fair trade practices such as mode of trading, fees, technical parameters including inter-operability with other platforms, logistics arrangements, quality assessment, timely payment, dissemination of guidelines in local language of the place of operation of the platform and such other matters.

(2) If the Central Government is of the opinion that it is necessary and expedient in public interest so to do, it may, for electronic trading platforms, by rules—

(a) specify the procedure, norms, manner of registration; and

(b) specify the code of conduct, technical parameters including inter-operability with other platform and modalities of trade transaction including logistics arrangements and quality assessment of scheduled farmers' produce and mode of payment,

for facilitating fair inter-State and intra-State trade and commerce of scheduled farmers' produce in a trade area.

Market fee under State APMC Act, etc., in trade area.

6. No market fee or cess or levy, by whatever name called, under any State APMC Act or any other State law, shall be levied on any farmer or trader or electronic trading and transaction platform for trade and commerce in scheduled farmers' produce in a trade area.

Price Information and Market Intelligence System.

7. (1) The Central Government may, through any Central Government Organisation, develop a Price Information and Market Intelligence System for farmers' produce and a framework for dissemination of information relating thereto.

(2) The Central Government may require any person owning and operating an electronic trading and transaction platform to provide information regarding such transactions as may be prescribed.

Explanation.—For the purposes of this section, the expression “Central Government Organisation” includes any sub-ordinate or attached office, Government owned or promoted company or society.

CHAPTER III

DISPUTE RESOLUTION

Dispute Resolution Mechanism for farmers.

8. (1) In case of any dispute arising out of a transaction between the farmer and a trader under section 4, the parties may seek a mutually acceptable solution through conciliation by filing an application to the Sub-Divisional Magistrate who shall refer such dispute to a Conciliation Board to be appointed by him for facilitating the binding settlement of the dispute.

(2) Every Board of Conciliation appointed by the Sub-Divisional Magistrate under sub-section (1), shall consist of a chairperson and such members not less than two and not more than four, as the Sub-Divisional Magistrate may deem fit.

(3) The chairperson shall be an officer serving under the supervision and control of the Sub-Divisional Magistrate and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party:

Provided that, if any party fails to make such recommendation within seven days, the Sub-Divisional Magistrate shall appoint such persons as he thinks fit to represent that party.

(4) Where, in respect of any dispute, a settlement is arrived at during the course of conciliation proceedings, a memorandum of settlement shall be drawn accordingly and signed by the parties to such dispute which shall be binding upon the parties.

(5) If the parties to the transaction under sub-section (1) are unable to resolve the dispute within thirty days in the manner set out under this section, they may approach the Sub-Divisional Magistrate concerned who shall be the "Sub-Divisional Authority" for settlement of such dispute.

(6) The Sub-Divisional Authority on its own motion or on a petition or on the reference from any Government agency take cognizance of any contravention of the provisions of section 4 or rules made thereunder and take action under sub-section (7).

(7) The Sub-Divisional Authority shall decide the dispute or contravention under this section in a summary manner within thirty days from the date of its filing and after giving the parties an opportunity of being heard, he may—

(a) pass an order for the recovery of the amount under dispute; or

(b) impose a penalty as stipulated in sub-section (1) of section 11; or

(c) pass an order for restraining the trader in dispute from undertaking any trade and commerce of scheduled farmers' produce, directly or indirectly under this Act for such period as it may deem fit.

(8) Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal before the Appellate Authority (Collector or Additional Collector nominated by the Collector) within thirty days of such order who shall dispose of the appeal within thirty days from the date of filing of such appeal.

(9) Every order of the Sub-Divisional Authority or Appellant Authority under this section shall have force of the decree of a civil court and shall be enforceable as such, and decretal amount shall be recovered as arrears of land revenue.

(10) The manner and procedure for filing a petition or an application before the Sub-Divisional Authority and appeal before the appellate authority shall be such as may be prescribed.

9. (1) The Agriculture Marketing Adviser, Directorate of Marketing and Inspection, Government of India or an officer of the State Government to whom such powers are delegated by the Central Government in consultation with the respective State Government may, on its own motion or on a petition or on the reference from any Government Agency, take cognizance of any breach of the procedures, norms, manner of registration and code of conduct or any breach of the guidelines for fair trade practices by the electronic trading and transaction platform established under section 5 or contravenes the provisions of section 7 and, by an order within sixty days from the date of receipt and for the reasons to be recorded, he may—

Suspension or cancellation of right to operate in Electronic Trading and Transaction Platform.

(a) pass an order for the recovery of the amount payable to the farmers and traders;

(b) impose a penalty as stipulated in sub-section (2) of section 11; or

(c) suspend for such period as he deems fit or cancel the right to operate as an electronic trading and transaction platform:

Provided that no order for recovery of amount, imposition of penalty or suspension or cancellation of the right to operate shall be passed without giving the operator of such electronic trading and transaction platform an opportunity of being heard.

(2) Every order made under sub-section (1) shall have force of the decree of a civil court and shall be enforceable as such and the decretal amount shall be recovered as arrears of land revenue.

Appeal against
cancellation
of right to
operate.

10. (1) Any person aggrieved by an order under section 9 may, prefer an appeal within sixty days from the date of such order, to an officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government for this purpose:

Provided that an appeal may be admitted even after the expiry of the said period of sixty days, but not beyond a total period of ninety days, if the appellant satisfies the appellate authority, that he had sufficient cause for not preferring the appeal within the said period.

(2) Every appeal made under this section shall be made in such form and manner, and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(3) The procedure for disposing of an appeal shall be such as may be prescribed.

(4) An appeal filed under this section shall be heard and disposed of within a period of ninety days from the date of its filing:

Provided that before disposing of an appeal, the appellant shall be given an opportunity of being heard.

CHAPTER IV

PENALTIES

Penalty for
contravention
of Act and
rules.

11. (1) Whoever contravenes the provisions of section 4 or the rules made thereunder shall be liable to pay a penalty which shall not be less than twenty-five thousand rupees but which may extend up to five lakh rupees, and where the contravention is a continuing one, further penalty not exceeding five thousand rupees for each day after the first day during which the contravention continues.

(2) If any person, who owns, controls or operates an electronic trading and transaction platform, contravenes the provisions of sections 5 and 7 or the rules made thereunder shall be liable to pay a penalty which shall not be less than fifty thousand rupees but which may extend up to ten lakh rupees, and where the contravention is a continuing one, further penalty not exceeding ten thousand rupees for each day after the first day during which the contravention continues.

CHAPTER V

MISCELLANEOUS

Powers of
Central
Government
to issue
instructions,
directions,
orders or
guidelines.

12. The Central Government may, for carrying out the provisions of this Act, give such instructions, directions, orders or issue guidelines as it may deem necessary to any authority or officer subordinate to the Central Government, any State Government or any authority or officer subordinate to a State Government, an electronic trading and transaction platform or to any person or persons owning or operating an electronic trading and transaction platform, or a trader or class of traders.

Protection of
action taken
in good faith.

13. No suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government, or any officer of the Central Government or the State Government or any other person in respect of anything which is in good faith done or intended to be done under this Act or of any rules or orders made thereunder.

14. The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any State APMC Act or any other law for time being in force or in any instrument having effect by virtue of any law for the time being in force.

Act to have overriding effect.

15. No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter, the cognizance of which can be taken and disposed of by any authority empowered by or under this Act or the rules made thereunder.

Bar of jurisdiction of civil court.

42 of 1956.

16. Nothing contained in this Act, shall be applicable to the Stock Exchanges and Clearing Corporations recognised under the Securities Contracts (Regulation) Act, 1956 and the transactions made thereunder.

Act not to apply to certain transactions.

17. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular and without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely:—

(a) the system of electronic registration for a trader and modalities of trade transaction of scheduled farmers' produce under sub-section (2) of section 4;

(b) the procedure of payment under proviso to sub-section (3) of section 4;

(c) the manner and procedure for filing a petition or an application before the Sub-Divisional Authority and appeal before the appellate authority under sub-section (10) of section 8;

(d) the information regarding transactions under sub-section (2) of section 9;

(e) the form and manner and the fee payable for filing an appeal under sub-section (2) of section 10;

(f) the procedure for disposing of an appeal under sub-section (3) of section 10;

(g) any other matter which is to be or may be prescribed.

18. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of rules.

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of the period of three years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Ord. 10 of 2020.

20. (1) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 is hereby repealed.

Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Agriculture provides most of the world's food and fabrics. Keeping in view the importance of agriculture, the States have enacted the Agricultural Produce Market Committee (APMC) Acts to develop market-yard as market place and to provide regulation on marketing practices of notified agricultural produce. However, the regulatory provisions hindered the freedom of choice-based marketing and also the inflow of investment in development of alternative markets and marketing infrastructure.

2. The Government of India had circulated the Model APMC Act, 2003 and the Model Agricultural Produce and Livestock Marketing (Promotion and Facilitating) Act, 2017 to the States to reform their APMC Acts with a view to increase competitiveness in agriculture supply chain, provide freedom to farmers to sell their produce through alternative marketing channels to get the fair prices through the market framework under the State legislations. However, the States have not embraced the reforms in a uniform manner, and the lack of homogeneity in the laws has been obstructing a competitive pricing environment for the farmers and is becoming an impediment to the evolution of a modern trading system.

3. Agriculture not only meets the food security requirements of the country, but also provides raw material to the agro-industry which culminates into job creation and earning of foreign exchange through export. Directly linking the agro-industry with the farmers shortens the supply chain, reduces the marketing cost and post-harvest losses and most importantly enhances farmers' income.

4. To keep pace with the dynamically changing agri-economy, e-commerce and agri-exports and also to meet the rising expectations of farmers and consumers, the country needs an accessible and competitive trading system outside the physical space of the notified market-yards under the State APMC Acts.

5. In the light of above circumstances, it has become necessary to enact a Central Legislation to provide a more competitive and hassle free eco-system where farmers and traders have the choice to sell their produce in an efficient, transparent and competitive environment to realise remunerative prices. However, as Parliament was not in session and an urgent legislation was required to be made, the President promulgated the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 (Ord. 10 of 2020) under clause (1) of article 123 of the Constitution on the 5th day of June, 2020.

6. The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 which seeks to replace the aforesaid Ordinance, *inter alia*, provides for the following, namely:—

(a) freedom of choice to the farmer or trader to conduct trade and commerce in a trade area;

(b) no trader shall be allowed to trade in a scheduled farmers' produce unless such a trader has a permanent account number or such other documents as may be notified by the Central Government;

(c) to allow any person or any farmer producer organisation or primary agricultural cooperative society to establish and operate an electronic trading and transaction platform for facilitating inter-State and intra-State trade and commerce of a scheduled farmers' produce;

(d) no market fee or cess shall be levied on any farmer or trader or electronic trading and transaction platform for trade and commerce in scheduled farmers' produce in a trade area;

(e) a dispute resolution mechanism in case of disputes between the farmers and traders; and

(f) to enable the Central Government to develop a “Price Information and Market Intelligence System” for farmers’ produce and a framework for dissemination of such information.

7. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 7th September, 2020.

NARENDRA SINGH TOMAR.

FINANCIAL MEMORANDUM

The provisions of the proposed Legislation does not involve any expenditure either recurring or non-recurring from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 17 of the Bill empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of said clause provides that such rules may provide for—(a) the system of electronic registration for a trader and modalities of trade transaction of scheduled farmers' produce under sub-section (2) of section 4; (b) the procedure of payment under proviso to sub-section (3) of section 4; (c) the manner and procedure for filing a petition or an application before the Sub-Divisional Authority and appeal before the appellate authority under sub-section (10) of section 8; (d) the information regarding transactions under sub-section (2) of section 9; (e) the form and manner and the fee payable for filing an appeal under sub-section (2) of section 10; (f) the procedure for disposing of an appeal under sub-section (3) of section 10; and (g) any other matter which is to be or may be prescribed.

2. The matters in respect of which the rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 112 OF 2020

A Bill to provide for a national framework on farming agreements that protects and empowers farmers to engage with agri-business firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020. Short title and commencement.

(2) It shall be deemed to have come into force on the 5th June, 2020.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "APMC yard" means the physical premises covering Agriculture Produce Market Committee Yard, by whatever name called, established for regulating markets and trade in farming produce under any State Act;

(b) "company" means a company as defined in clause (20) of section 2 of the Companies Act, 2013;

18 of 2013.

(c) "electronic trading and transaction platform" means a platform set up to facilitate direct and online buying and selling for conduct of trade and commerce of farming produce through a network of electronic devices and internet applications;

(d) "farm services" includes supply of seed, feed, fodder, agro-chemicals, machinery and technology, advice, non-chemical agro-inputs and such other inputs for farming;

(e) "farmer" means an individual engaged in the production of farming produce by self or by hired labour or otherwise, and includes the Farmer Producer Organisation;

(f) "Farmer Producer Organisation" means an association or group of farmers, by whatever name called,—

(i) registered under any law for the time being in force; or

(ii) promoted under a scheme or programme sponsored by the Central Government or the State Government;

(g) "farming agreement" means a written agreement entered into between a farmer and a Sponsor, or a farmer, a Sponsor and any third party, prior to the production or rearing of any farming produce of a predetermined quality, in which the Sponsor agrees to purchase such farming produce from the farmer and to provide farm services.

Explanation.—For the purposes of this clause, the term "farming agreement" may include—

(i) "trade and commerce agreement", where the ownership of commodity remains with the farmer during production and he gets the price of produce on its delivery as per the agreed terms with the Sponsor;

(ii) "production agreement", where the Sponsor agrees to provide farm services, either fully or partially and to bear the risk of output, but agrees to make payment to the farmer for the services rendered by such farmer; and

(iii) such other agreements or a combination of agreements specified above;

(h) "farming produce" includes—

(i) foodstuffs, including edible oilseeds and oils, all kinds of cereals like wheat, rice or other coarse grains, pulses, vegetables, fruits, nuts, spices, sugarcane and products of poultry, piggery, goatery, fishery and dairy, intended for human consumption in its natural or processed form;

(ii) cattle fodder, including oilcakes and other concentrates;

(iii) raw cotton, whether ginned or unginned;

(iv) cotton seeds and raw jute;

(i) "firm" means a firm as defined in section 4 of the Indian Partnership Act, 1932;

9 of 1932.

(j) "force majeure" means any unforeseen external event, including flood, drought, bad weather, earthquake, epidemic outbreak of disease, insect-pests and such other events, which is unavoidable and beyond the control of parties entering into a farming agreement;

(k) "notification" means a notification published by the Central Government or the State Government, as the case may be, in the Official Gazette and the expression "notified" shall be construed accordingly;

(l) "person" includes—

(i) an individual;

(ii) a partnership firm;

(iii) a company;

(iv) a limited liability partnership;

(v) a co-operative society;

(vi) a society; or

(vii) any association or body of persons duly incorporated or recognised as a group under any ongoing programmes of the Central Government or the State Government;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Registration Authority" means an authority notified as such by the State Government under section 12;

(o) "Sponsor" means a person who has entered into a farming agreement with the farmer to purchase a farming produce;

(p) "State" includes Union territory.

CHAPTER II

FARMING AGREEMENT

3. (1) A farmer may enter into a written farming agreement in respect of any farming produce and such agreement may provide for—

Farming agreement and its period.

(a) the terms and conditions for supply of such produce, including the time of supply, quality, grade, standards, price and such other matters; and

(b) the terms related to supply of farm services:

Provided that the responsibility for compliance of any legal requirement for providing such farm services shall be with the Sponsor or the farm service provider, as the case may be.

(2) No farming agreement shall be entered into by a farmer under this section in derogation of any rights of a share cropper.

Explanation.—For the purposes of this sub-section, the term "share cropper" means a tiller or occupier of a farm land who formally or informally agrees to give fixed share of crop or to pay fixed amount to the land owner for growing or rearing of farming produce.

(3) The minimum period of the farming agreement shall be for one crop season or one production cycle of livestock, as the case may be, and the maximum period shall be five years:

Provided that where the production cycle of any farming produce is longer and may go beyond five years, in such case, the maximum period of farming agreement may be mutually decided by the farmer and the Sponsor and explicitly mentioned in the farming agreement.

(4) For the purposes of facilitating farmers to enter into written farming agreements, the Central Government may issue necessary guidelines alongwith model farming agreements, in such manner, as it deems fit.

Quality, grade and standards of farming produce.

4. (1) The parties entering into a farming agreement may identify and require as a condition for the performance of such agreement compliance with mutually acceptable quality, grade and standards of a farming produce.

(2) For the purposes of sub-section (1), the parties may adopt the quality, grade and standards—

(a) which are compatible with agronomic practices, agro-climate and such other factors; or

(b) formulated by any agency of the Central Government or the State Government or any agency authorised by such Government for this purpose,

and explicitly mention such quality, grade and standards in the farming agreement.

(3) The quality, grade and standards for pesticide residue, food safety standards, good farming practices and labour and social development standards may also be adopted in the farming agreement.

(4) The parties entering into a farming agreement may require as a condition that such mutually acceptable quality, grade and standards shall be monitored and certified during the process of cultivation or rearing, or at the time of delivery, by third party qualified assayers to ensure impartiality and fairness.

Pricing of farming produce.

5. The price to be paid for the purchase of a farming produce may be determined and mentioned in the farming agreement itself, and in case, such price is subject to variation, then, such agreement shall explicitly provide for—

(a) a guaranteed price to be paid for such produce;

(b) a clear price reference for any additional amount over and above the guaranteed price, including bonus or premium, to ensure best value to the farmer and such price reference may be linked to the prevailing prices in specified APMC yard or electronic trading and transaction platform or any other suitable benchmark prices:

Provided that the method of determining such price or guaranteed price or additional amount shall be annexed to the farming agreement.

Sale or purchase of farming produce.

6. (1) Where, under a farming agreement, the delivery of any farming produce is to be—

(a) taken by the Sponsor at the farm gate, he shall take such delivery within the agreed time;

(b) effected by the farmer, it shall be the responsibility of the Sponsor to ensure that all preparations for the timely acceptance of such delivery have been made.

(2) The Sponsor may, before accepting the delivery of any farming produce, inspect the quality or any other feature of such produce as specified in the farming agreement, otherwise, he shall be deemed to have inspected the produce and shall have no right to retract from acceptance of such produce at the time of its delivery or thereafter.

(3) The Sponsor shall,—

(a) where the farming agreement relates to seed production, make payment of not less than two-third of agreed amount at the time of delivery and the remaining amount after due certification, but not later than thirty days of delivery;

(b) in other cases, make payment of agreed amount at the time of accepting the delivery of farming produce and issue a receipt slip with details of the sale proceeds.

(4) The State Government may prescribe the mode and manner in which payment shall be made to the farmer under sub-section (3).

7. (1) Where a farming agreement has been entered into in respect of any farming produce under this Act, such produce shall be exempt from the application of any State Act, by whatever name called, established for the purpose of regulation of sale and purchase of such farming produce.

Exemptions with respect to farming produce.

10 of 1955.

(2) Notwithstanding anything contained in the Essential Commodities Act, 1955 or in any control order issued thereunder or in any other law for the time being in force, any obligation related to stock limit shall not be applicable to such quantities of farming produce as are purchased under a farming agreement entered into in accordance with the provisions of this Act.

8. No farming agreement shall be entered into for the purpose of—

(a) any transfer, including sale, lease and mortgage of the land or premises of the farmer; or

(b) raising any permanent structure or making any modification on the land or premises of the farmer, unless the Sponsor agrees to remove such structure or to restore the land to its original condition, at his cost, on the conclusion of the agreement or expiry of the agreement period, as the case may be:

Sponsor prohibited from acquiring ownership rights or making permanent modifications on farmer's land or premises.

Provided that where such structure is not removed as agreed by the Sponsor, the ownership of such structure shall vest with the farmer after conclusion of the agreement or expiry of the agreement period, as the case may be.

9. A farming agreement may be linked with insurance or credit instrument under any scheme of the Central Government or the State Government or any financial service provider to ensure risk mitigation and flow of credit to farmer or Sponsor or both.

Linkage of farming agreement with insurance or credit.

10. Save as otherwise provided in this Act, an aggregator or farm service provider may become a party to the farming agreement and in such case, the role and services of such aggregator or farm service provider shall be explicitly mentioned in such farming agreement.

Other parties to farming agreement.

Explanation.—For the purposes of this section,—

(i) "aggregator" means any person, including a Farmer Producer Organisation, who acts as an intermediary between a farmer or a group of farmers and a Sponsor and provides aggregation related services to both farmers and Sponsor;

(ii) "farm service provider" means any person who provides farm services.

11. At any time after entering into a farming agreement, the parties to such agreement may, with mutual consent, alter or terminate such agreement for any reasonable cause.

Alteration or termination of farming agreement.

12. (1) A State Government may notify a Registration Authority to provide for electronic registry for that State that provides facilitative framework for registration of farming agreements.

Establishment of Registration Authority.

(2) The constitution, composition, powers and functions of the Registration Authority and the procedure for registration shall be such as may be prescribed by the State Government.

CHAPTER III

DISPUTE SETTLEMENT

13. (1) Every farming agreement shall explicitly provide for a conciliation process and formation of a conciliation board consisting of representatives of parties to the agreement:

Conciliation board for dispute settlement.

Provided that representation of parties in such conciliation board shall be fair and balanced.

(2) A dispute arising from any farming agreement shall be first referred to the conciliation board formed as per the provisions of the farming agreement and every endeavour shall be made by such board to bring about settlement of such dispute.

(3) Where, in respect of any dispute, a settlement is arrived during the course of conciliation proceeding, a memorandum of settlement shall be drawn accordingly and signed by the parties to such dispute and such settlement shall be binding on the parties.

Mechanism
for dispute
resolution.

14. (1) Where, the farming agreement does not provide for conciliation process as required under sub-section (1) of section 13, or the parties to the farming agreement fail to settle their dispute under that section within a period of thirty days, then, any such party may approach the concerned Sub-Divisional Magistrate who shall be the Sub-Divisional Authority for deciding the disputes under farming agreements.

(2) On receipt of a dispute under sub-section (1), the Sub-Divisional Authority may, if—

(a) the farming agreement did not provide for conciliation process, constitute a conciliation board for bringing about settlement of such dispute; or

(b) the parties failed to settle their dispute through conciliation process, decide the dispute in a summary manner within thirty days from the date of receipt of such dispute, after giving the parties a reasonable opportunity of being heard and pass an order for recovery of the amount under dispute, with such penalty and interest, as it deems fit, subject to the following conditions, namely:—

(i) where the Sponsor fails to make payment of the amount due to the farmer, such penalty may extend to one and half times the amount due;

(ii) where the order is against the farmer for recovery of the amount due to the Sponsor on account of any advance payment or cost of inputs, as per terms of farming agreement, such amount shall not exceed the actual cost incurred by the Sponsor;

(iii) where the farming agreement in dispute is in contravention of the provisions of this Act, or default by the farmer is due to force majeure, then, no order for recovery of amount shall be passed against the farmer.

(3) Every order passed by the Sub-Divisional Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that of a decree under the Code of Civil Procedure, 1908, unless an appeal is preferred under sub-section (4).

5 of 1908.

(4) Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal to the Appellate Authority, which shall be presided over by the Collector or Additional Collector nominated by the Collector, within thirty days from the date of such order.

(5) The Appellate Authority shall dispose of the appeal within thirty days.

(6) Every order passed by the Appellant Authority under this section shall have same force as a decree of a civil court and be enforceable in the same manner as that of a decree under the Code of Civil Procedure, 1908.

5 of 1908.

(7) The amount payable under any order passed by the Sub-Divisional Authority or the Appellant Authority, as the case may be, may be recovered as arrears of land revenue.

(8) The Sub-Divisional Authority or the Appellate Authority shall, while deciding disputes under this section, have all the powers of a civil court for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed by the Central Government.

(9) The manner and procedure for filing a petition or an application before the Sub-Divisional Authority and an appeal before the Appellate Authority shall be such as may be prescribed by the Central Government.

15. Notwithstanding anything contained in section 14, no action for recovery of any amount due in pursuance of an order passed under that section, shall be initiated against the agricultural land of the farmer.

No action for recovery of dues against farmer's land.

CHAPTER IV

MISCELLANEOUS

16. The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for effective implementation of the provisions of this Act and the State Governments shall comply with such directions.

Power of Central Government to give directions. Authorities under Act to be public servants.

45 of 1860.

17. All authorities, including Registration Authority, Sub-Divisional Authority and Appellate Authority, constituted or prescribed under this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

18. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Registration Authority, the Sub-Divisional Authority, the Appellate Authority or any other person for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder.

Protection of action taken in good faith.

19. No civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any dispute which a Sub-Divisional Authority or the Appellate Authority is empowered by or under this Act to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any rules made thereunder.

Bar of jurisdiction of civil court.

20. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any State law for the time being in force or in any instrument having effect by virtue of any such law other than this Act:

Act to have an overriding effect.

Provided that a farming agreement or such contract entered into under any State law for the time being in force, or any rules made thereunder, before the date of coming into force of this Act, shall continue to be valid for the period of such agreement or contract.

42 of 1956.

21. Nothing contained in this Act shall be applicable to the stock exchanges and clearing corporations recognised under the Securities Contracts (Regulation) Act, 1956 and the transactions undertaken therein.

Act not to apply to stock exchanges and clearing corporations.

22. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) other purposes for which the Sub-Divisional Authority or the Appellate Authority shall have the powers of civil court under sub-section (8) of section 14;

(b) the manner and procedure for filing petition or application before the Sub-Divisional Authority, and an appeal before the Appellate Authority, under sub-section (9) of section 14;

(c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules, by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total

period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

23. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the mode and manner of payment to the farmer under sub-section (4) of section 6;

(b) the constitution, composition, powers and functions of the Registration Authority, and the procedure for registration under sub-section (2) of section 12;

(c) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules, by the State Government.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to remove difficulties.

24. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and savings.

25. (1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 shall be deemed to have been done or taken under the corresponding provisions of this Act.

Ord. 11 of 2020.

Ord. 11 of 2020.

STATEMENT OF OBJECTS AND REASONS

Indian Agriculture is characterised by fragmentation due to small holdings and has certain weaknesses such as dependence on weather, uncertainties in production and unpredictable market. This makes agriculture risky and inefficient in respect of both input and output management. These challenges needed to be addressed by way of realising higher productivity, cost effective production and efficient monetisation of the produce to increase the farmers' income. It was felt that promotion of agreements for farming produce may strengthen the process of monetisation whose primary objective is to de-risk agriculture at various stages, enable scaling of investment by industry for production and processing of high value agriculture produces, give fillip to exports and help farmers to enjoy the additional benefits of operational efficiency.

2. The COVID-19 pandemic and resultant lockdown also threw up challenges for agriculture and impacted the livelihood of farmers. As agriculture sector has immense potential to make significant contribution to the economic growth, there was a need to find long term solutions for farmers and for agriculture as a whole. Therefore, to achieve these objectives and to mitigate risks for farmers, enhance their income, put in place an effective and conducive policy regime for agreements and for holistic development of the agriculture sector, there was a need for immediate legislation.

3. As the Parliament was not in session and there was an immediate need for legislation in this regard, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 was promulgated by the President of India on the 5th June, 2020 under clause (1) of article 123 of the Constitution.

4. The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020 which seeks to replace the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 (Ord. 11 of 2020) provides for—

- (a) facilitating written farming agreement to be entered into in respect of a farming produce, except where such agreement derogates the rights of a share cropper;
- (b) the conditions for performance of farming agreement, including compliance with mutually acceptable quality, grade and standards of farming produce;
- (c) the pricing of farming produce;
- (d) the manner of delivery of farming produce;
- (e) exempting the farming produce under a farming agreement from the application of a State Act regulating the sale and purchase of such farming produce and also from the provisions of the Essential Commodities Act, 1955 (10 of 1955) and the control orders made thereunder;
- (f) prohibiting the Sponsor from acquiring ownership rights or making permanent modification on farmers' land or premises;
- (g) the Sponsor to ensure timely acceptance of delivery and payment for such farming produce;
- (h) linkage of farming agreement with insurance or credit instrument;
- (i) establishment of Registration Authority to provide for e-registry and for registration of farming agreements;
- (j) conciliation and dispute settlement mechanism for settlement of disputes under the farming agreement.

5. The Bill seeks to replace the aforesaid Ordinance.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 22 of the Bill empowers the Central Government to make rules by notification in the Official Gazette, *inter alia*, in respect of matters relating to (i) other purposes for which the Sub-Divisional Authority or the Appellate Authority shall have the powers of civil court; (ii) the manner and procedure for filing petition or application before the Sub-Divisional Authority, and an appeal before the Appellate Authority; (iii) any other matter in respect of which provision is to be made by rules by the Central Government.

2. Clause 23 of the Bill empowers the State Government to make rules by notification in the Official Gazette, *inter alia*, in respect of matters relating to (i) the mode and manner of payment to the farmer; (ii) the constitution, composition, powers and functions of the Registration Authority, and the procedure for registration; (iii) any other matter in respect of which provision is to be made by rules by the State Government.

3. The matters in respect of which rules may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 115 OF 2020

A Bill to amend the Factoring Regulation Act, 2011.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Factoring Regulation (Amendment) Act, 2020.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

12 of 2012.

2. In section 2 of the Factoring Regulation Act, 2011 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(i) in clause (a), for the words commencing with "transfer by agreement" and ending with "outside India", the words "transfer by agreement to a factor of an undivided interest, in whole or in part, in the receivables of an assignor due from a

debtor and includes such transfer where either the assignor or the debtor is situated or established outside India" shall be substituted;

(ii) in clause (j),—

(A) in the opening portion, for the words commencing with "acquisition of receivables" and ending with "any receivables but", the words "acquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment, but" shall be substituted;

(B) in sub-clause (i), after the word "bank", the words "or a non-banking financial company" shall be inserted;

(iii) for clause (p), the following clauses shall be substituted, namely:—

'(p) "receivables" means the money owed by a debtor and not yet paid to the assignor for goods or services and includes payment of any sum, by whatever name called, required to be paid for the toll or for the use of any infrastructure facility or services;

(pa) "regulations" means regulations made by the Reserve Bank under this Act;';

(iv) after clause (s), the following clause shall be inserted, namely:—

'(sa) "Trade Receivables Discounting System" means a payment system authorised by the Reserve Bank under section 7 of the Payment and Settlement Systems Act, 2007 for the purpose of facilitating financing of trade receivables;'. 51 of 2007.

Amendment
of section 3.

3. In section 3 of the principal Act,—

(i) in sub-section (2), the proviso and the *Explanation* shall be omitted;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) The Reserve Bank may grant the certificate of registration in such manner as may be specified by regulations."

Amendment
of section 19.

4. In section 19 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry set-up under section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, within such time from the date of such assignment, in such manner and subject to payment of such fee, as may be prescribed."; 54 of 2002.

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Where any trade receivables are financed through a Trade Receivables Discounting System, the particulars specified in sub-section (1) and sub-section (3) shall be filed with the Central Registry on behalf of the factor by the Trade Receivables Discounting System concerned, in such manner as may be specified by regulations."

Insertion of new
section 31A.

5. After section 31 of the principal Act, the following section shall be inserted, namely:—

Power to make
regulations.

"31A. (1) The Reserve Bank may, by notification, make regulations consistent with this Act to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the manner of granting certificate of registration under sub-section (4) of section 3;

(b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors under sub-section (1A) of section 19;

(c) any other matter which is required to be, or may be, specified by regulations.

(3) Every regulation shall, as soon as may be after it is made by the Reserve Bank, be forwarded to the Central Government and that Central Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

6. In section 32 of the principal Act, in sub-section (2), in clause (a), for the words "the form and manner", the words "the time within which, the form and manner" shall be substituted.

Amendment of
section 32.

STATEMENT OF OBJECTS AND REASONS

The Factoring Regulation Act, 2011 was enacted to provide for regulating the assignment of receivables to factors, registration of factors carrying on factoring business and the rights and obligations of parties to the contract for assignment of receivables.

2. Though the very purpose of the said Act was to address the problems of delay in payment and liquidity faced by all enterprises, including micro, small and medium enterprises, the said problems persist. These enterprises continue to face delay in payment against their bills for supplies made to various buyers. Due to this, their working capital gets locked and further production activities by such enterprises get hampered. Therefore, in January, 2019, the Reserve Bank of India had constituted an expert committee on micro, small and medium enterprises under the Chairmanship of Shri U.K. Sinha to suggest long-term measures for the economic and financial sustainability of said sector.

3. The expert committee has recommended that, (i) non-banking finance companies, other than those non-banking finance companies whose principal business is factoring, should also be permitted to discount invoices on Trade Receivables Discounting System in order to widen the scope of financiers; (ii) the Trade Receivables Discounting System concerned should be permitted to act as agents of financiers for filing registration of charges with the Central Registry as it would bring operational efficiency; and (iii) the time period for registration of invoice and satisfaction of charge upon it should be reduced in order to check possibility of dual financing.

4. After considering the above recommendations, the Government has decided to amend the Factoring Regulation Act, 2011 on the above lines and has also declared its intention in the Budget speech of 2019-20 and 2020-21. The amendments are expected to help micro, small and medium enterprises significantly, by providing added avenues for getting credit facility, especially through Trade Receivables Discounting System. Increase in the availability of working capital may lead to growth in the business of the micro, small and medium enterprises sector and also boost employment in the country.

5. The Factoring Regulation (Amendment) Bill, 2020, *inter alia*, seeks to—

(i) amend the definitions of "assignment", "factoring business" and "receivables", so as to bring them in consonance with international definitions and also to insert a new definition of "Trade Receivables Discounting System" in section 2;

(ii) amend section 3 to widen the scope of financiers and to permit other non-banking finance companies also to undertake factoring business and participate on the Trade Receivables Discounting System platform for discounting the invoices of micro, small and medium enterprises;

(iii) amend sub-section (1) of section 19 to reduce the time period for registration of invoice and satisfaction of charge upon it, in order to avoid possibility of dual financing; and also to insert a new sub-section (1A) in that section to allow the concerned Trade Receivables Discounting System to register charge with the Central Registry on behalf of the factors using the platform;

(iv) insert a new section 31A to empower the Reserve Bank of India to make regulations with respect to factoring business.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 3rd September, 2020.

NIRMALA SITHARAMAN.

FINANCIAL MEMORANDUM

The provisions of the Bill do not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new section 31A in the Factoring Regulation Act, 2011 so as to empower the Reserve Bank of India to make regulations in respect of matters relating to, (a) the manner of granting certificate of registration; (b) the manner of filing of particulars of transactions with the Central Registry on behalf of factors; and (c) any other matter which is required to be specified by regulations.

Clause 6 of the Bill seeks to amend clause (a) of sub-section (2) of section 32 of the said Act to empower the Central Government to make rules to provide the time within which every factor shall register the particulars of every transaction of assignment of receivables in his favour with the Central Registry.

The matters in respect of which rules and regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 114 OF 2020

A Bill further to amend the Banking Regulation Act, 1949.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

Short title and
commencement.

1. (1) This Act may be called the Banking Regulation (Amendment) Act, 2020.

(2) It shall be deemed to have come into force on the 26th day of June, 2020, except section 4, which, in so far as it relates to—

(i) primary co-operative banks, be deemed to have come into force on the 29th day of June, 2020;

(ii) state co-operative banks and central co-operative banks, come into force on such date as the Central Government may by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for state co-operative banks and central co-operative banks and any reference in any such provision to the

commencement of this Act shall be construed as a reference to the coming into force of that provision.

10 of 1949.

2. In the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), for section 3, the following section shall be substituted, namely:—

Substitution of new section for section 3.

61 of 1981.

“3. Notwithstanding anything contained in the National Bank for Agriculture and Rural Development Act, 1981, this Act shall not apply to—

Act not to apply to certain co-operative societies.

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long-term finance for agricultural development,

if such society does not use as part of its name, or in connection with its business, the words “bank”, “banker” or “banking” and does not act as drawee of cheques.”.

3. In section 45 of the principal Act,—

Amendment of section 45.

(i) in the marginal heading, for the word “reconstitution”, the word “reconstruction” shall be substituted;

(ii) in sub-section (3), after the words “other creditors”, the words “or grant any loans or advances or make investments in any credit instruments” shall be inserted;

(iii) in sub-section (4), after the words “During the period of moratorium”, the words “or at any other time” shall be inserted;

(iv) in sub-section (5), in clauses (e), (i) and (j), for the words “date of the order of moratorium”, the words “reconstruction or amalgamation” shall be substituted;

(v) in sub-section (6), in clause (a), for the word “amalgamation”, the words “reconstruction or amalgamation” shall be substituted;

(vi) in sub-section (15), the words “or a subsidiary bank” shall be omitted.

4. In section 56 of the principal Act,—

Amendment of section 56.

(A) in the opening portion, for the words “The provisions of this Act, as in force for the time being,”, the words “Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act” shall be substituted;

(B) in clause (a), after sub-clause (ii), the following sub-clauses shall be inserted, namely:—

‘(iii) references to “memorandum of association” or “articles of association” shall be construed as references to bye-laws;

1 of 1956.

(iv) references to the provisions of the Companies Act, 1956, except in Part III and Part IIIA, shall be construed as references to the corresponding provisions, if any, of the law under which a co-operative bank is registered;

(v) references to “Registrar” or “Registrar of Companies” shall be construed as references to “Central Registrar” or “Registrar of Co-operative Societies”, as the case may be, under the law under which a co-operative bank is registered;’;

(C) clause (d) shall be omitted;

(D) in clause (e), sub-clauses (i) and (iii) shall be omitted;

(E) in clause (f), in section 7 as so substituted, in sub-section (2),—

(I) in clause (b), the words “or co-operative land mortgage banks” shall be omitted;

(II) in clause (c), in sub-clause (ii), the words “or a co-operative land mortgage bank” shall be omitted;

(F) clauses (fi), (fii) and (g) shall be omitted;

(G) for clause (i), the following clause shall be substituted, namely:—

‘(i) for section 12, the following section shall be substituted, namely:—

“12. (I) A co-operative bank may, with the prior approval of the Reserve Bank, issue, by way of public issue or private placement,—

(i) equity shares or preference shares or special shares, on face value or at premium; and

(ii) unsecured debentures or bonds or other like securities with initial or original maturity of not less than ten years,

to any member of such co-operative bank or any other person residing within its area of operation, subject to such conditions and ceiling, limit or restriction on its issue or subscription or transfer, as may be specified by the Reserve Bank in this behalf.

(2) Save as otherwise provided in this Act,—

(i) no person shall be entitled to demand payment towards surrender of shares issued to him by a co-operative bank; and

(ii) a co-operative bank shall not withdraw or reduce its share capital, except to the extent and subject to such conditions as the Reserve Bank may specify in this behalf.”;

(H) clauses (l), (n) and (p) shall be omitted;

(I) in clause (q), sub-clauses (ii) and (iv) shall be omitted;

(J) clauses (r), (ria) and (sa) shall be omitted;

(K) in clause (t), sub-clause (i) shall be omitted;

(L) clauses (u), (v), (x), (y), (z) and (za) shall be omitted;

(M) in clause (zaa),—

(a) in section 36AAA as so inserted,—

(i) for the words “multi-State co-operative bank”, wherever they occur, the words “co-operative bank” shall be substituted;

(ii) in sub-section (I), the following proviso shall be inserted, namely:—

“Provided that in the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall issue such order in consultation with the concerned State Government seeking its comments, if any, within such period as the Reserve Bank may specify.”;

(iii) after sub-section (9), the following sub-section shall be inserted, namely:—

“(10) The provisions of section 36ACA shall not apply to a co-operative bank.”;

(b) section 36AAB as so inserted shall be omitted;

(N) for clause (zb), the following clause shall be substituted, namely:—

“(zb) Part IIC shall be omitted.”;

Issue and regulation of paid-up share capital and securities by co-operative banks.

(O) in clause (zc), sub-clause (i) shall be omitted;

(P) clauses (zd) and (zf) shall be omitted;

(Q) for clause (zg), the following clause shall be substituted, namely:—

‘(zg) in section 49B, references to “Central Government” shall be construed as references to “Central Registrar” or “Registrar of Co-operative Societies”, as the case may be, under the law under which a co-operative bank is registered;’;

(R) clause (zh) shall be omitted;

(S) for clause (zj), the following clause shall be substituted, namely:—

‘(zj) after section 53, the following section shall be inserted, namely:—

“53A. Notwithstanding anything contained in any other provisions of this Act, the Reserve Bank may, from time to time, on being satisfied that it is necessary so to do, declare, by notification in the Official Gazette, that the provisions of item (iii) of clause (b) of sub-section (1) and sub-section (2), of section 10, clause (a) of sub-section (2) of section 10A, sub-section (1A) of section 10B and clause (b) of sub-section (1) of section 35B of this Act shall not apply to a co-operative bank or class of co-operative banks, either generally or for such period as may be specified therein, subject to such conditions, limitations or restrictions as it may think fit to impose.”;’.

Powers to exempt co-operative banks in certain cases.

Ord. 12 of 2020.

5. (1) The Banking Regulation (Amendment) Ordinance, 2020 is hereby repealed.

Repeal and savings.

10 of 1949.

(2) Notwithstanding such repeal, anything done or any action taken under the Banking Regulation Act, 1949, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Banking Regulation Act, 1949 was enacted to consolidate and amend the law relating to banking. Section 3 of the said Act provides that the Act shall not apply to certain co-operative societies, except in the manner and to the extent specified therein. Section 45 empowers the Reserve Bank of India for suspension of business by a banking company and to prepare a scheme of reconstruction or amalgamation during the order of moratorium. Part V thereof provides for the application of the Banking Regulation Act, 1949 to co-operative banks, subject to certain modifications specified in section 56.

2. Certain amendments were considered necessary in the said Act to provide for better management and proper regulation of co-operative banks and to ensure that the affairs of the co-operative banks are conducted in a manner that protects the interests of the depositors, by increasing professionalism, enabling access to capital, improving governance and ensuring sound banking through the Reserve Bank of India. Accordingly, the Banking Regulation (Amendment) Bill, 2020 was introduced in Lok Sabha on the 3rd March, 2020, but the same could not be passed.

3. Further amendments were proposed to be made in section 45 of the Act to enable the Reserve Bank of India to make a scheme to protect the interests of the public, the banking system, depositors or to secure the banking company's proper management, without first making an order of moratorium so as to avoid disruptions in the financial system.

4. As the economic situation arising from the COVID-19 pandemic had increased the stress in both co-operative banks and banking companies, there was an immediate need for legislation in this regard. As Parliament was not in session, the Banking Regulation (Amendment) Ordinance, 2020 was promulgated by the President of India on the 26th day of June, 2020 under clause (1) of article 123 of the Constitution.

5. The Banking Regulation (Amendment) Bill, 2020 which seeks to replace the Banking Regulation (Amendment) Ordinance, 2020 (Ord. 12 of 2020) provides for the following, namely:—

(i) substitution of section 3 to provide that the Act shall not apply to—

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long term finance for agricultural development,

if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques;

(ii) amendment of section 45 to address the potential disruptions in the financial system by providing for the Reserve Bank of India to prepare a scheme for the reconstruction or amalgamation of the banking company without the necessity of first making an order of moratorium;

(iii) amendment of section 56 to provide that notwithstanding anything contained in any other law for the time being in force, the provisions of the Act shall apply to co-operative societies, subject to the modifications specified therein.

6. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 3rd September, 2020.

NIRMALA SITHARAMAN.

SNEHLATA SHRIVASTAVA,
Secretary-General.